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SUPREME COURT OF THE UNITED STATES.

No. 254.

J. J. B. WHITE (DEFENDANT) AND GILBERT S. HAWKINS AND PETER J. COCKBURN, COMPOSING THE FIRM OF OAKEY, HAWKINS & CO., AND MRS. W. C. W. FAUST, WIDOW, AND MRS. REBECCA J. WHITE, AIDED AND ASSISTED BY HER HUSBAND, J. J. B. WHITE, (INTERVENORS,) PLAINTIFFS IN ERROR,

vs.

HAMILTON M. WRIGHT AND THE SOLE ASSIGNEES OF THE RIGHTS AND INTERESTS OF THE LATE COMMERCIAL FIRM OF WRIGHT, WILLIAMS & CO.

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STATE OF LOUISIANA.

Fourth District Court of New Orleans.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE. } No. 10,328.

Petition.—Filed November 17th, 1856.

To the Honorable the Judge of the Fourth District Court of New Orleans:

The petition of Hamilton M. Wright, who resides in New Orleans, respectfully shows:

That petitioner is sole assignee of the rights and interests of the late commercial firm of Wright, Williams & Co., existing for the purpose of liquidation, of which petitioner, William V. Davenport, and John G. Glover, who resided in New Orleans, were partners; that J. J. B. White, who resides out of the State of Louisiana, is indebted to your petitioner as such assignee in the sum of nine thousand five hundred and nine $\frac{32}{100}$ dollars and interest at the rate of eight per centum per annum from the 9th day of June, 1855, until paid, for money paid on his account and at his request, as set forth in the account hereto annexed; that said White has promised to pay the same, but has, notwithstanding amicable demand, neglected so to do; that he has property within the jurisdiction of the court liable to attachment; and that upon filing bond and affidavit this day a writ of attachment be issued upon petitioner's prayer.

Wherefore petitioner prays that said J. J. B. White be duly cited to appear and answer this petition; that after due proceedings, that the attachment issued be maintained; that he be condemned to pay said sum of $9,509 $\frac{32}{100}$, with interest as aforesaid, with privilege upon the property attached; and petitioner asks for general relief and costs.

(Signed) CLARKE & BAYNE,
For Pet'er.

Account annexed.

Col. J. J. B. WHITE

In account with WRIGHT, WILLIAMS & Co. Dr.

1855.

June 9. To cash paid our acceptance your draft fav.
James Dick Hill, due 20th Feb'y, 1855.... $9,281 44

To paid protest of same.....	3 00
" p'd interest to 9 June, 1855, 109 d's, at 8 p. c.....	224 88
Amount paid by us 9th June, 1855.....	$9,509 32

Errors excepted.
New Orleans, 9th June, 1855.
(Signed) WRIGHT, WILLIAMS & CO.,
Per RICH'D F. HARRISON.

Affidavit for Attachment.—Filed 17th Nov'ber, 1856.

Fourth District Court of New Orleans.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE.

Hamilton M. Wright, being duly sworn, deposeth and saith, that J. J. B. White is justly and truly indebted to the firm of Wright, Williams & Co., in liquidation, a commercial firm of which deponent is a member, and of whose rights and interests he is sole transferee, in the sum of nine thousand five hundred and nine $\frac{32}{100}$ dollars, with interest at the rate of eight per centum per annum from 9th day of June, 1855, until paid; that said sum is due and owing; that said White resides out of the State of Louisiana, and an attachment is necessary, for which he prays, against said White, for said sum.

(Signed) H. M. WRIGHT.

Sworn to and subscribed before me Nov'ber 17th, 1856.
(Signed) C. M. BRADFORD, *J. P.*

Order.

Let attachment process issue in this case, the plaintiff giving bond with good and solvent security, conditioned as the law directs.
New Orleans, November 17th, 1856.
(Signed) WM. C. AULD, *Clerk.*

Attachment Bond, annexed.

Know all men by these presents, that we, Wright, Williams & Co., in liquidation, and McCutcheon, Howell & Co., of the city of New Orleans, and State of Louisiana, are held and firmly bound unto J. J. B. White, in the sum of eighteen thousand dollars, lawful money of the United States of America, to be paid to the said J. J. B. White, his heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with

our seals and dated the 17th day of November, in the year of our Lord 1856.

Whereas Wright, Williams & Co., in liquidation, have this day presented a petition to the honorable the fourth district court of New Orleans, praying a writ of attachment:

Now the condition of the above obligation is, that the above bounden Wright, Williams & Co., in liquidation, and McCutcheon, Howell & Co., will well and truly pay to the said J. J. B. White, the defendant in said attachment, all such damages as he may recover against us in case it should be decided that the attachment was wrongfully obtained.

(Signed) WRIGHT, WILLIAMS & CO., [L. S.]
In Liquidation.
" McCUTCHEON, HOWELL & CO., [L. S.]
By W. C. McC.

Signed, sealed, and delivered, in the presence of—
(Signed) B. F. PETERS,
" R. R. BALLARD.

Writ of Attachment.

Fourth District Court of New Orleans.

The State of Louisiana to the Sheriff of the Parish of Orleans, greeting:

Whereas due proof has been made before the fourth district court of New Orleans, by H. M. Wright, that J. J. B. White is indebted to the commercial firm of Wright, Williams & Co., in liquidation, of which firm he is a member, in the sum of nine thousand five hundred and nine $\frac{32}{100}$ dollars with interest, and that the said defendant resides permanently out of the State of Louisiana, you are hereby commanded, in the name of the State of Louisiana and of the fourth district court of New Orleans, to seize and attach, according to law, and take into your possession, the goods and chattels, lands and tenements, rights and moneys, effects and credits, of the said defendant, if any you find in said parish, to the amount of what will suffice to discharge the said debt and costs of suit; and that you give notice of this proceeding by leaving a copy thereof at the last place of abode of the said defendant, if in said parish, and causing a copy thereof to be affixed at the door of the parish church of said parish, and make a return of this writ, and endorse thereon the manner in which you have executed it before our court, on or before the fourth Monday of December, in the year of our Lord 1856.

(Signed) JAS. B. MURTAGH, *D'y C'lk.*

[SEAL.] Clerk's Office, 17th day of November, 1856.

Sheriff's Return.

Rec'd 17th November, 1856, and on the 18th of the same month, at a quarter past 4 o'clock in the morning, repaired on board the steamer Sallie Robinson, and seized and took into my possession 154 bales of cotton, marked "Tokeba," and served notice of attachment on James Proteer, 1st clerk of the steamer Sallie Robinson, at the moment of making the seizure, and which cotton I stored at the Pelican press, and posted copy of this writ to the door of the church of the parish of St. Louis of Orleans, in the city of New Orleans, and to that of the room in which this hon'ble court is held; and afterwards, to wit, on the 27th of the same month, the said cotton was released and delivered over to the intervenors, Oakey, Hawkins & Co., by order of court, upon their executing a bond in the sum of ten thousand dollars, with John D. Bein as security, conditioned as pointed out by law, and which bond is herewith returned this 29th November, 1856.

(Signed) S. BLOSSMAN, *D'y Sh'ff.*

Bond annexed to Return.

Know all men, that we, Oakey, Hawkins & Co., intervenors, as principals, and John D. Bein, as security, are held unto John M. Bell, sheriff of the parish of Orleans, in the State of Louisiana, in the penal sum of ten thousand dollars, ($10,000,) for the payment whereof to the said John M. Bell, his executors, administrators, and assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, respectively, by these presents, as witness our respective names hereunto affixed, at New Orleans, this 27th day of November, in the year one thousand eight hundred and fifty-six.

Whereas, in and by virtue of a writ of attachment issued out of the honorable the 4th district court of New Orleans, at the suit of Wright, Williams & Co. vs. J. J. B. White, and numbered 10,628 on the docket of the said court, and which suit is now pending therein, the following described property, to wit, 154 bales cotton, marked Tokeba, per "Sallie Robinson," have been seized, taken into the custody of the said sheriff, and detained accordingly to law; but the same has been claimed by the said Oakey, Hawkins & Co., intervenors, and has been released and delivered to them, upon their appearance in the said suit and delivering to the said sheriff the present obligation: the condition of which is such, that if the said intervenors shall produce the property to meet the judgment of the court, or account for the proceeds thereof whenever required, should judgment go against them, then this obligation to be void; or else to remain in full force, virtue, and effect.

(Signed) OAKEY, HAWKINS & CO.,
By G. S. HAWKINS.
(") JOHN D. BEIN.

Signed and delivered in presence of—
(Signed) Jos. S. Foley, Jr., *D'y Sh'ff.*

Citation to post up.

State of Louisiana—Fourth District Court of New Orleans.

Mr. J. J. B. White, "residing out of the State:"

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable M. M. Reynolds, judge of the said court, the 17th day of November, in the year of our Lord 1856.

(Signed) A. N. MURTAGH, [seal.]
D'y Clerk.

Wright, Williams & Co., in Liquidation, vs. J. J. B. White. } No. 10,628.

Sheriff's Return.

Received November 21st, 1856, and on the same day posted copies of the within citation to the door of the church of St. Louis, parish of Orleans, and to that of the room in which this honorable court is held. Returned same day.

Sheriff's fees $1.

(Signed) S. P. FARGE, *D'y Sh'ff.*

Intervention of Oakey, Hawkins & Co.—Filed 22d Nov'ber, 1856

Wright, Williams & Co. vs. J. J. B. White. } No. 10,628.

To the Hon'ble the Fourth District Court of New Orleans:

The petition of intervention of Gilbert S. Hawkins and Peter J. Cockburn, who reside and trade in New Orleans, under the firm of Oakey, Hawkins & Co., shows:

That the plaintiffs in the above entitled suit have caused, under the attachment issued therein, one hundred and fifty-four bales of cotton to be seized by the sheriff of the parish of Orleans, as the property of J. J. B. White, the defendant therein.

That the said cotton was regularly shipped and consigned to W. L. Clark, from White's landing, to these petitioners, for the account of P. O'Donnell, as will be seen by the bill of lading of the same hereto annexed and made part hereof.

That the bill of lading of the said cotton was delivered to the said O'Donnell on the 11th of November, 1856, and he became thereby the possessor and owner of the said cotton.

That petitioners received the bill of lading of said cotton before the attachment was levied in this case.

That the said J. J. B. White never was the owner of the said one hundred and fifty-four bales of cotton, but the same was the property, in her own right, of Mrs. Rebecca S. White, the wife of said J. J. B. White.

That by the laws of the State of Mississippi, where the said Mrs. White resides, she is authorized and empowered by law to own and hold property separate and distinct from her husband, unsubjected to his control or the payment of his debts.

That petitioners are entitled to the possession of the said 154 bales of cotton, and for this purpose they are entitled to bond the same, and that said cotton is of the value of $6,500 00.

Wherefore petitioners pray to be allowed to file this their intervention, and to be allowed to bond said cotton, which is of the value as aforesaid of $6,500; and they further pray that the said Wright, Williams & Co., and the defendant, be cited to anwer hereto, and that the said plaintiffs, defendant, and the sheriff, John M. Bell, be condemned to deliver said cotton to petitioner, and that their claim to the same be rejected; and for costs and general relief, &c.

(Signed) MOTT & FRASER, *Atty's.*

Order.

Let this petition of intervention and third opposition be filed.

November 22d, 1856.

(Signed) M. M. REYNOLDS, *Judge.*

Bill Lading annexed (Doc't marked M.)

Shipped in good order and condition, by W. L. Clark, on board the steamboat called the "Sallie Robinson," whereof Dyas Power is master, now lying at the port of White's landing, and bound for New Orleans, (154) one hundred and fifty-four
154. Tokeba, E. bales cotton for ac. P. O. Donnell, being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New Orleans, (the dangers of the rivers and fire excepted,) unto Oakey & Hawkins, or assigns, he or they paying freight for the said cotton at one dollar and fifty cents per bale.

In witness whereof the master or clerk of the said steamboat hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Nov'er 11th, 1856.

(Signed) B. F. POWERS.

Citation for Plaintiffs.

State of Louisiana—Fourth District Court of New Orleans.

Messrs. Wright, Williams & Co.:

You are hereby summoned to comply with the demand contained

in the petition of intervention of Oakey, &c., of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable M. M. Reynolds, judge of the said court, the 22d day of November, in the year of our Lord 1856.

(Signed) SAM'L GILMORE, [SEAL.]
D'y Clerk.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

Sheriff's Return.

Received 28th November, 1856, and on the 29th of the same month and year, served a copy of this citation and accompanying petition of intervention of Oakey, Hawkins & Co., on H. M. Wright, of the firm of Wright, Williams & Co., personally.

Returned same day.

Sh'ff's fee $1 00.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

Citation for Defendant.

State of Louisiana—Fourth District Court of New Orleans.

Mr. J. J. B. White:

You are hereby summoned to comply with the demand contained in the petition of intervention of Oakey, Hawkins & Co., of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable M. M. Reynolds, judge of the said court, the 22d day of November, in the year of our Lord 1856.

(Signed) SAM'L GILMORE, [SEAL.]
D'y Clerk.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

Sheriff's Return.

Received December 3d, 1856, and on the 4th of the same month and year, served a copy of this citation and accompanying petition on T. N. Peirce, esq., attorney appointed to represent the absent defendant herein personally.

Returned same day.

Sheriff's fee $1 00.

(Signed) ROB'T. SWAIN, *D'y Sh'ff.*

Citation for Sheriff.

State of Louisiana—Fourth District Court of New Orleans.

John M. Bell, sheriff:

You are hereby summoned to comply with the demand contained in the petition of intervention of Oakey, Hawkins & Co., of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable M. M. Reynolds, judge of the said court, the 22d day of November, in the year of our Lord 1856.

(Signed) SAM'L GILMORE, [SEAL.]
D'y Clerk.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

Sheriff's Return.

Rec'd 28th Nov'er, 1856, and accepted service for the sheriff, John M. Bell.

Returned 29th November, 1856.

Sheriff's fee $1 00.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

Rule of Intervenors to Bond, &c.—November 22d, 1856.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

On motion of Mott and Fraser, of counsel for Oakey, Hawkins & Co., intervenors herein, it is ordered by the court that plaintiffs show cause, on Tuesday, the 25th day of November, 1856, at 10 o'clock a. m., why intervenors should not be allowed to bond the property attached herein, upon their giving bond according to to law, and for the reasons set forth in their intervention.

Sheriff's Return.

Received November 22d, 1856, and on the same day served a copy of this rule on T. L. Bayne, esq., personally.

Returned same day.

Sh'ff's fees $\frac{50}{100}$.

(Signed) ROBT. SWAIN,
D'y Sh'ff.

Order (Rule to Bond made absolute).—25th November, 1856.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE. } No. 10,628.

The rule taken by the intervenors on the 22d inst. came on to-day—Mott and Fraser, for pl'ffs in rule; Clarke and Bayne, for plaintiffs—when, after hearing counsel, it is ordered that the rule be made absolute, and that Oakey, Hawkins & Co., intervenors, be permitted to bond the cotton attached, upon giving bond in the sum of ten thousand dollars, with good and solvent security, conditioned as the law directs.

Intervention of Mrs. R. J. White and Mrs. Faust.—Filed 27th November, 1856.

To the Honorable the Fourth District Court of New Orleans:

The petition of Mrs. Rebecca J. White, herein not aided and assisted by her husband, who is absent, in her own right and as guardian and tutrix of her children, and Mrs. S. C. W. Faust, both of whom reside in the county of , State of Mississippi, shows, that in suit No. 10,628 on the docket of this honorable court, Wright, Williams & Co. have caused one hundred and fifty-four bales of cotton to be attached, as the property of the defendant in said suit.

Now, petitioners aver that they are the owners of said 154 bales of cotton, Mrs. White and her children in the proportion of three-fourths, and Mrs. Faust in the proportion of one-fourth, and that the said defendant, White, is in no way interested in the same, as owner.

That the plantation and slaves, from which the said cotton was produced, is the separate property of these petitioners; and that, by the laws of the State of Mississippi, petitioners are guaranteed in the possession and ownership of property separate and apart from their husbands, and free from the debts of their husbands.

That the said cotton is of the value of $8,500, and was consigned by order of petitioners to Oakey, Hawkins & Co.

Wherefore petitioners pray that said Wright, Williams & Co., John M. Bell, sheriff, and the defendant, be cited to answer hereto; that petitioners be decreed the owners of said 154 bales of cotton, and that the same be delivered to them, or, in default thereof, the value of said cotton; that the attachment of the plaintiffs be set aside, so far as the said cotton is concerned, and that petitioners have leave to file this petition of intervention, and be authorized by order of court, so far as Mrs. White is concerned, to prosecute this suit; and for costs and general relief, &c.

(Signed) MOTT & FRASER, *Att'ys.*

Order.

Let this petition of intervention and third opposition be filed; and let Mrs. White be authorized herein to sue.

(Signed) M. M. REYNOLDS, *Judge.*

Citation for Plaintiffs.

State of Louisiana—Fourth District Court of New Orleans.

Messrs. Wright, Williams & Co.:

You are hereby summoned to comply with the demand contained in the petition of intervention of Mrs. White et al., of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable M. M. Reynolds, judge of the said court, the 27th day of November, in the year of our Lord 1856.

(Signed) SAM'L GILMORE, [SEAL.]
D'y Clerk.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

Seriff's Return.

Rec'd 28th November, 1856, and on the 29th of the same month and year, served a copy of this citation and accompanying petition of intervention of Mrs. White, on H. M. Wright, of the firm of Wright, Williams & Co., personally.

Ret'd same day.

Sh'ff's fees, $1 00.

(Signed) ROBT. SWAIN,
D'y Sh'ff.

Citation for Defendant.

State of Louisiana—Fourth District Court of New Orleans.

Mr. J. J. B. White:

You are hereby summoned to comply with the demand contained in the petition of intervention of Mrs. White et al., of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable M. M. Reynolds, judge of the said court, the 27th day of November, in the year of your Lord 1856.

(Signed) SAM'L GILMORE, [SEAL.]
D'y Clerk.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

Sheriff's Return.

Rec'd December 3d, 1856, and on the 4th of the same month

and year, served a copy of this citation and accompanying petition on T. N. Peirce, esq., attorney, appointed to represent the absent defendant herein, personally.

Returned same day.

Sh'ff's fees, $1 00.

(Signed) ROBT. SWAIN,
D'y Sh'ff.

Citation for Sheriff.

State of Louisiana—Fourth District Court of New Orleans.

Mr. JOHN M. BELL, *Sheriff:*

You are hereby summoned to comply with the demand contained in the petition of intervention of Mrs. White et al., of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witnes the Honorable M. M. Reynolds, judge of the said court, the 27th day of November, in the year of our Lord 1856.

(Signed) SAM'L GILMORE, [SEAL.]
D'y Clerk.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

Sheriff's Return.

Received 28th November, 1856, and accepted service for the sheriff, J. M. Bell. Returned same day.

Sh'ff's fees, $1 00.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

Order appointing T. N. Peirce to represent Defendant.

2d DECEMBER, 1856.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

On motion of Clarke and Bayne, of counsel for plaintiffs, it is ordered that T. N. Peirce, esq., be appointed to represent the absent defendant herein.

Notice to T. N. Peirce, Esq.

State of Louisiana—Fourth District Court of New Orleans.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE. } No. 10,628.

To T. N. PEIRCE, Esq.:

You are hereby notified that you have been appointed by the court, attorney to represent the absent defendant in the above entitled case.

Clerk's office, New Orleans, this 2d day of December, 1856.

[SEAL.]

(Signed) SAM'L GILMORE,
D'y Clerk.

Sheriff's Return.

Rec'd December 3d, 1856, and on the 4th of the same month and year, served a copy of this notice on T. N. Peirce, esq., personally. Returned same day.

Sh'ff's fees, $\frac{50}{100}$.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

Alias Citation for Defendant.

State of Louisiana—Fourth District Court of New Orleans.

MR. J. J. B. WHITE, residing out of the State:

You are hereby again summoned to comply in the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service thereof.

Witness the Honorable M. M. Reynolds, judge of the said court, the 2d day of December, in the year of our Lord 1856.

(Signed) SAM'L GILMORE, [SEAL.]
D'y Clerk.

WRIGHT, WILLIAMS & Co., in Liq., vs. J. J. B. WHITE. } No. 10,628.

Sheriff's Return.

Rec'd December 3d, 1856, and on the 4th of the same month and year, served a copy of this citation and accompanying original petition, &c., on T. N. Peirce, esq., curator ad hoc to defendant herein, personally.

Sheriff's fees, $1 00.

(Signed) ROB'T SWAIN,
D'y Sheriff.

Supplemental Petition.—Filed January 14th, 1857.

To the Honorable the Judge of the Fourth District Court of New Orleans:

The supplemental petition of Hamilton M. Wright respectfully

shows: That in this suit, entitled Wright, Williams & Co., in liquidation, vs. J. J. B. White, No. 10,628 of the docket, he obtained a writ of attachment; that thereunder a seizure was made, but insufficient to satisfy his said claim; that the attachment has expired, and is returned; that an additional attachment is necessary to secure the said claim; that in consideration of the bond and affidavit herewith filed, he prays your honor will order an alias attachment to issue in this cause; that citation issue upon this petition; that judgment be rendered as prayed for in the original petition, with privilege upon the property attached under said writ, and the alias writ now prayed for; and petitioners ask for general relief.

(Signed) CLARKE & BAYNE,
For Pet'ers.

Affidavit annexed.

Fifth District Court of New Orleans.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE.

Hamilton M. Wright, being duly sworn, deposeth and saith, that J. J. B. White is justly and truly indebted to the firm of Wright, Williams & Co., in liquidation, a commercial firm of which deponent is a member, and of whose rights and interests he is sole transferee, in the sum of $9,509 $\frac{32}{100}$ dollars, with interest at the rate of eight per centum per annum from 9th day of June, 1855, until paid; that said sum is due and owing; that said White resides out of the State of Louisiana, and an alias writ of attachment is necessary to secure the same, for which he prays against said White for said sum.

(Signed) H. M. WRIGHT.

Sworn to and subscribed before me, this 14th Jan'y, 1857.
(Signed) JAS. B. MURTAGH,
D'y Clerk.

Order.

Let this supplemental petition be filed, and let attachment process issue in this case, the plaintiffs giving bond, with good and solvent security, conditioned as the law directs.

New Orleans, January 14th, 1857.
(Signed) M. M. REYNOLDS, *Judge.*

Bond annexed.

Know all men by these presents, that we, Wright, Williams & Co., in liquidation, and Samuel S. Green, of the city of New Or-

leans and State of Louisiana, are held and firmly bound unto J. J. B. White, in the sum of eighteen thousand dollars, lawful money of the United States of America, to be paid to the said J. J. B. White, his heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents:

Sealed with our seals and dated the 14th day of January, in the year of our Lord 1857.

Whereas Wright, Williams and Co. have this day presented a petition to the hon'ble the fourth district court of New Orleans, praying a writ of attachment:

Now, the condition of the above obligation is that we, the above bound Wright, Williams & Co., and Samuel S. Green, will well and truly pay to the said J. J. B. White, the defendant in said attachment, all such damages as he may recover against us, in case it should be decided that the attachment was wrongfully obtained.

(Sig'd) WRIGHT, WILLIAMS & Co.
By H. M. WRIGHT. [L. S.]
(Sig'd) SAM'L S. GREEN. [L. S.]

Signed, sealed and delivered in the presence of—
(Signed) THO'S ALLEN CLARK.

Writ of Attachment, issued 14th Jan'y, 1857, still in the hands of the Sheriff.

Citation for Defendant.

State of Louisiana—Fourth District Court of New Orleans.

Mr. J. J. B. White:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable M. M. Reynolds, judge of the said court, the 14th day of January, in the year of our Lord 1857.

(Signed) JAS. B. MURTAGH, [SEAL.]
D'y Clerk.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE.
} No. 10,628.

Sheriff's Return.

Rec'd January 16th, 1857, and on the same day served a copy of this citation and accompanying petition on T. N. Peirce, curator ad hoc herein, personally. Returned same day.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

Sheriff's fees, $1 00.

Answer of Defendant.—Filed 20th January, 1857.

Fourth District Court of New Orleans.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

To the honorable the Judge of the Fourth District Court of New Orleans:

The undersigned, counsel appointed by this court to represent said defendant, J. J. B. White, and to defend him in above entitled suit, respectfully represents, that he wrote to the said defendant on or about the 16th December last, informing him of said suit, and desiring to know his defence, to which letter he has received no answer; and the time allowed by this court having expired, the undersigned, counsel representing said defendant, J. J. B. White, under the appointment of this court, and not otherwise, for answer to the plaintiff's petition, denies all and singular the allegations therein contained; and the undersigned, counsel representing said defendantas aforesaid, and not otherwise, represents that he has been informed (though not by said defendant) that the property attached in this suit is not and never was the property of said defendant, White, which fact he now (representing said White under the appointment of the court as aforesaid, and not otherwise) pleads and avers that no property belonging to said defendant has been attached in this suit, and that the property attached belonged to other persons than defendant, and this suit should therefore be dismissed.

He therefore prays, the premises being considered, that said defendant be dismissed hence with costs, and that this suit be dismissed, and also that a commission issue to take the depositions of Patrick O'Donnell, Elias B. Rundle, George W. Woodbery, and William Clark, on behalf of defendant, and for all other and general relief.

(Signed) THOS. N. PEIRCE,
Att'y for Def't by appointment of this Court.

Order for Commission.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

11th MARCH, 1857.

On motion of A. A. Fraser, esq., on behalf of T. N. Peirce, curator ad hoc of the absent defendant, it is ordered that a commission issue herein, directed to J. H. Lawrence, jr., commissioner for Louisiana, in the city of Yazoo, State of Mississippi, to take

testimony on behalf of said defendant, and that 30 days be allowed for the return thereof.

Default on Interventions ag'st Plaintiff and Def't.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

27th MAY, 1857.

On motion of Mott and Fraser, of counsel for Oakey, Hawkins & Co., and Mrs. Faust, intervenors, and on showing to the court that the plaintiffs and defendant have failed to answer, tho' duly cited, ordered that judgment by default be entered against them.

Answer of Pl'ffs to Intervention of Oakey, H. & Co.—Filed May 29th, 1859.

4th District Court of New Orleans.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE.

The answer of plaintiffs in the above entitled suit, for answer to the intervention of Oakey, Hawkins & Co., denies all and singular the allegations thereof, and prays that the same be dismissed with costs.

(Signed) CLARKE & BAYNE,
For Pl'ffs.

Order.—Default set aside as to Pl'ffs.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

29th MAY, 1857.

On motion of Clarke and Bayne, esq., for plaintiffs, and on filing answer to the interventions herein, ordered that the judgment by default taken on the 27th instant be set aside so far as they are concerned.

Exception and Answer of Pl'ffs to Interv'on of Mrs. White et al.—Filed 29th May, 1857.

4th District Court of New Orleans.

WRIGHT, WILLIAMS & Co.,
in Liquidation,
vs.
JAMES J. B. WHITE.

Now comes the plaintiff in the above entitled cause, and to the

petition of intervention of Mrs. Rebecca J. White, in her own right and as guardian of her children, and Mrs. S. C. W. Faust, excepts to the same, on the ground that anterior to the filing of the same, the cotton claimed had been delivered on bond to the intervenors, Oakey, Hawkins & Co., and is not now in court. And if the same should be overruled, then, and not otherwise, he denies all and singular the allegations of said petition in intervention, and prays that the same be dismissed with costs.

(Signed) CLARKE & BAYNE,
For Pl'ffs.

Supplemental Petition.—Filed 29th May, 1857.

4th District Court of New Orleans.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
JAMES J. B. WHITE.

To the honorable the Judge thereof:

The supplemental petition of Hamilton M. Wright, plaintiff in this cause, respectfully shows:

That since the institution of this suit, upon the 29th day of December, 1856, at a circuit court, in and for the fifth judicial district of the State of Mississippi, in and for the county of Yazoo, a judgment was rendered in favor of your petitioner, and Jules J. Glover, petitioner's assignor, against the said defendant, James J. B. White, for the same subject-matter stated in the original petition filed in this cause, as will appear by the annexed transcript of the proceedings in this cause, filed for reference and as part of this petition.

Wherefore petitioner prays judgment as in said original petition, that this supplemental petition be filed and the defendant cited to answer the same.

(Signed) CLARKE & BAYNE,
For Pet'ers.

Order.

Let this supplemental petition be filed May. 29th, 1857.
(Signed) J. W. PRICE, *Judge.*

Citation for Defendant.

State of Louisiana—Fourth District Court of New Orleans.

Mr. James J. B. White:

You are hereby summoned to comply with the demand contained in the supplemental petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk

of the fourth district court of New Orleans, in the city of New Orleans, in ten days after the service hereof.

Witness the Honorable M. M. Reynolds, judge of the said court, the 29th day of May, in the year of our Lord 1857.

(Signed) SAM'l GILMORE, [SEAL.]
D'y Clerk.

WRIGHT, WILLIAMS & Co., in Liquidation, vs. J. J. B. WHITE. } No. 10,628.

Sheriff's Return.

Received May 30th, 1857, and on the 2d June, 1857, served a copy of this citation and supplemental petition on T. N. Peirce, curator ad hoc to defendant herein, personally.

Return same day.

Sh'ff's fee, $1 00.

(Signed) ROB'T SWAIN, *D'y Sh'ff.*

Exception of Defendant.—Filed June 11th, 1857.

Fourth District Court of New Orleans.

WRIGHT, WILLIAMS & Co. vs. J. J. B. WHITE. } No. 10,628.

To the honorable the Judge of the Fourth District Court of New Orleans:

The defendant, represented by the undersigned attorney, appointed by the court for that purpose, and not otherwise, excepts to plaintiffs' petition and amended petition in this: that the original cause of action, if any existed, has been merged in the judgment rendered in the State of Mississippi, and the proceedings therein had, as shown by the supplemental petition and documents annexed; that this court, by the said proceedings of plaintiffs, has been divested of jurisdiction in the matters in controversy, and this suit should be dismissed at plaintiffs' costs. Defendant further pleads res judicata.

The defendant therefore, by the undersigned counsel appointed as aforesaid, prays that this suit be dismissed, at plaintiff's costs.

(Signed) THOS. N. PIERCE,
Att'y appointed by the Court for Def't.

Order and Continuance.

WRIGHT, WILLIAMS & Co. vs. J. J. B. WHITE. } No. 10,628.

5th NOVEMBER, 1857.

This cause was this day called for trial—Clarke and Bayne for plaintiffs; Mott and Fraser for intervenors; Thomas N. Peirce, curator ad hoc—when, on account of the absence of witnesses, the same is continued till Thursday, the 19th inst., at 10 o'clock a. m.

Affidavit of Pl'ff for Commission.—Filed 11th November, 1857.

4th District Court of New Orleans.

WRIGHT, WILLIAMS & Co., vs. J. J. B. WHITE.

H. M. Wright, plaintiff in the above entitled suit, being duly sworn, deposeth and saith, that James Partee is a material witness for the plaintiffs in said cause; that he is now in New Orleans, where he resides, but is about to depart from the State, so that deponent fears that he may be deprived of the advantage he expects to derive from said testimony, unless the same is taken and a commission immediately issue.

(Signed) H. M. WRIGHT.

Sworn to and subscribed before me, November 11th, 1857.

(Signed) C. M. BRADFORD, *J. P.*

Order.

Let commission issue herein as prayed for and according to law, directed to any justice of the peace of the parish of Orleans.

Nov'ber 11th, 1857.

(Signed) J. W. PRICE, *Judge.*

Exception of Intervenors to Supp'l Petition.—Filed November 19th, 1857.

4th Dist. Court.

WRIGHT, WILLIAMS & Co. vs. J. J. B. WHITE.

Now come into court Oakey, Hawkins & Co., Mrs. Rebecca White, and S. C. W. Faust, intervenors herein, and except to the amended petition, filed herein by plaintiffs, on the 29th day of May, 1857, upon the ground that the same is a change of the original cause of action, and is contrary to law, and they further plead the exception of res judicata.

Wherefore they pray that plaintiffs' original and supplemental petition be dismissed with costs, and the attachment be dissolved and set aside, and for general relief.

(Signed) MOTT & FRASER,
For Intervenors.

Testimony.—Filed November 19th, 1857.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE.

J. N. Brickell, esq., sworn for the plaintiffs, says he knows the situation of White's landing; it is in front of the Topeka plantation, three miles above Yazoo City.

Since 1835 this plantation has been occupied by the defendant, White, and his family. Mr. White is the uncle of deponent's father.

Cross-examined by Def'ts' Counsel.

He knows Mrs. Rebecca White; she is the wife of the defendant in this suit; they were married in 1835; before she married she was Miss Williams.

Since 1836 the defendant and Mrs. Rebecca White, his wife, have occupied that plantation; they got married in 1835, in the month of June; went north and returned in the fall, and have since resided on the plantation.

Testimony of Robert Mott.—Filed 19th Nov'er, 1857.

Fourth District Court of New Orleans.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE.

Robert Mott, esq., for defendant, states that the slaves in the State of Mississippi are personal property, transferable by delivery in the same manner as any other chattels or personal property, such as a horse, a cow, &c.; but if given as security under a deed of trust, or any other equivalent security for a personal debt, where the possession remains in the vendor, the same must be in writing. Has practised law in Mississippi some years ago.

Where a slave or other personal property is transferred by a married woman, she must acknowledge the deed before a justice of the peace.

The ownership of a slave can be proved by parol as any other personal property.

Cross-examined by Pl'ffs.

His recollections are, that this is the result of custom in that country, and not by statutory laws.

The common law of England, or rather what is called the common law of England, prevails in Mississippi, as is recognised by the Supreme Court of the United States, except so far as is modified by statutes.

Order and Continuance.

19TH NOVEMBER, 1857.

WRIGHT, WILLIAMS & Co., in Liquidation, vs. J. J. B. WHITE. } No. 10,628.

This cause came on this day for trial—Clarke & Bayne, for pl'ffs; T. N. Peirce, curator ad hoc; Mott & Fraser, for intervenors—when, after hearing pleadings and evidence in part, the cause is continued till Thursday, the 3d of December next, at 10 o'clock.

Order and Continuance.

3D DECEMBER, 1857.

WRIGHT, WILLIAMS & Co., in Liquidation, vs. J. J. B. WHITE. } No. 10,628.

This cause came on again for trial—Clarke & Bayne, for plaintiffs; T. N. Peirce, for defendant; Mott & Fraser, for intervenors—when, after hearing evidence, the same is continued till to-morrow morning at 10 o'clock.

Testimony offered in Evidence on Trial.—Filed December 3d, 1857.

WRIGHT, WILLIAMS & Co. vs. J. J. B. WHITE. } No. 10,628.

Plaintiff offered in evidence document marked A.

R. F. Harrison, sworn for plaintiffs: Knows Philip Maher and Commodore Adams; they are both absent from the city; is familiar with the signature of Mrs. Davenport; recognises her signature to document B, genuine; often has he seen letters written by her; deponent has witnessed document C; saw the same signed.

Plaintiffs offered in evidence doc'ts B and C; has seen the signature of Mr. White, the defendant, frequently; being shown doc't D, he says this draft was paid to R. W. Estlin & Lee by Mr. Wright.

Document D is not offered or admitted in evidence.

Plaintiffs offered in evidence record marked E, and depositions marked O.

Samuel Powers sworn; not examined at present.

Pl'ffs offered in evidence the attachment and sheriff's return in this case. Also record marked F and doc't G; certificate of costs of transcript.

The exception of pl'ffs to the intervention of Mrs. White is overruled by the court.

Defendant offered in evidence the testimony taken under commission H; plaintiffs reserved their rights to except to the same.

What is hearsay evidence is ordered to be stricken out.

Hutchinson's Digest is offered in evidence by the defendant; the same may be used in original, in case an appeal should be taken.

Defendants offered in evidence document marked I, which is admitted to prove rem ipsam; also document K, which is admitted for the same purpose.

The intervenors offered in evidence the testimony of the witnesses taken under commission, H, except that of P. O'Donnell, which is received by the court to prove possession, but not ownership. The intervenors offered in evidence the two deeds marked I and K. The same are received by the court like any other deed.

A. B. Beers sworn for intervenors: Says he was clerk for Oakey & Hawkins in November, 1856, and received bill of lading annexed to intervention of Oakey, Hawkins & Co. Don't recollect the exact time, but it was early in the morning; presumes it came through the post office. The cotton was reported to the house of Oakey & Hawkins, but it has been attached; they afterwards bonded the cotton, sold it, and placed the proceeds to the credit of J. J. B. White, agent. They had an account on their books in the name of J. J. B. White, agent; this account was indebted to them in a sum above $9,000, as is evidenced in part by the draft which he now produces.

Intervenors offered said draft in evidence, marked N; this draft fell due after the cotton was received, and had been accepted some two months before the cotton was shipped; it was paid at maturity by O., H. & Co.; the house of Oakey, Hawkins & Co. had no account with J. J. B. White previous to the acceptance of the draft. Mr. O'Donnell had an account on the books with Oakey & Hawkins; he owed the latter a balance at the time the cotton was shipped.

Cross-examined: Did not keep the books of O. & H. when this cotton was seized; don't think he ever looked in the books at the time the draft was accepted, to see how the acc't of J. J. B. White, agent, was entered; don't know that the word agent has been added since the institution of this suit.

Being asked if he can swear that it is to his knowledge that this account with J. J. B. White, agent, on the books of Oakey & Hawkins, was there anterior to the institution of this suit, says he cannot.

Saw the draft at the time it was paid or soon after; don't know that the word "agent" has been added since the acceptance of said draft; don't know whether it had been negotiated and passed out of the hands of Oakey & Hawkins.

Re-examined: The draft has the signature of A. and M. Heino

on it. It must have been negotiated, because it never was endorsed to accommodate Oakey & Hawkins.

Edw. Hill sworn for intervenors: Was in Oakey & Hawkins' employ in November, 1856; bill of lading, M, was received in due course; perceives it is the same, his own memoranda of having entered it on the books; can't say whether it came to Oakey & Hawkins by boat or mail; saw it in the morning.

Draft N was accepted by Oakey, Hawkins & Co. before the cotton was received, some two months before, and before there was any dispute about the cotton. Deponent made the original entry on the books for this draft; entered in the name of J. J. B. White, agent, immediately, or the next moment after it was accepted; the cotton named on the bill of lading was sold by Oakey & Hawkins and carried to the credit of J. J. B. White, agent, he believes. Draft N, he judges from the endorsement to have been sold or negotiated. The house of O. & H. must have paid the draft at maturity, because they are in possession of it; thinks the draft was remitted to O. & H. by P. O'Donnell; thinks the proceeds of the draft went to the credit of O'Donnell; deponent did not keep O. & H.'s books; he had charge of the cotton and bills of lading. Deponent looked upon the presentation and acceptance of this draft as having been done in a regular course of business. Mr. O'Donnell had an acc't on the books of O. &. H. when they accepted this draft. Deponent is not now in the employ of O., H. & Co.; left them in February, 1857. Intervenors offered in evidence the statute laws of Mississippi.

Document A, offered in evidence by Plaintiff.—Filed 3d December, 1857.

SUCCESSION of WM. DAVENPORT. } No. 8,939.

2d District Court of New Orleans.

To the Honorable the Judge thereof:

The petition of Henrietta Davenport, widow, in community of the deceased, William V. Davenport, respectfully shows: That a family meeting, duly convoked by this honorable court, has advised that the community property be adjudicated to your petitioner at a price to be affixed by appraisers to be appointed, which proceedings have been approved and homologated, and said appraisers appointed and sworn by your honor; that they have reported that all the community property consists of the interest in the partnership of Wright, Williams & Co., and have valued the same at $16,000. Wherefore petitioner prays that the same be adjudicated to her at said price and sum, after notification to under tutor.

(Signed) CLARKE & BAYNE, *for Pet'er.*

Order.

Considering the deliberations of family meeting approved and homologated on the 14th March last, 1856, it is ordered that the community property, consisting of the interest in the partnership of Wright, Williams & Co., be adjudicated to petitioner at the appraised value made by experts, say $16,000.

New Orleans, 3d April, 1856.

(Signed) P. H. MORGAN, *Judge.*

A true copy.

Clerk's office, this 4th Nov'r, 1857.

(Signed) F. A. FAGOT,
D'y Clerk.

Document B, offered in evidence by Plaintiffs.—Filed December 3d, 1857.

No. 10,628.

For and in consideration of the sum of sixteen thousand dollars to me in hand paid, I, Henrietta V. Davenport, widow in community of the late William V. Davenport, to whom all the community rights have been adjudicated, do hereby sell, assign, and transfer to Hamilton M. Wright, of New Orleans, all my rights, and those of the said community, in and to the property and assets of the firm of Wright, Williams & Co., the said Wright obligating himself to pay and discharge all the debts of said firm; and I hereby authorize said Wright to prosecute all claims either in his own name or my name, in all courts and places, as may be expedient or necessary for the collection of the same, giving him hereby the fullest power to that end.

Signed, sealed, and delivered at New Orleans, this 23d day of April, 1856.

(Signed) HENRIETTA V. DAVENPORT.

Witnesses:

(Signed) PHILIP MAHER,
H. H. ADAMS.

Document C, offered in evidence by Plaintiffs.—Filed 3d December, 1857.

No. 10,628.

For value received, and in consideration of sundry bills and accounts delivered over to me by H. M. Wright, esq., I hereby assign unto him all my right, title, and interest in the business and assets of the late firm of Wright, Williams & Co.

New Orleans, 27th February, 1856.

(Triplicate.) (Signed) JOHN G. GLOVER.

Witnesses:

(Signed) RICH'D F. HARDIN,
ROBERT R. BALLARD.

Document E, offered in evidence by Plaintiffs.—Filed December 3d, 1857.

H. M. WRIGHT et al.
vs.
JAMES J. B. WHITE. } No. 10,628.

Pleas before the Hon'ble E. G. Henry, judge of the fifth judicial district of the State of Mississippi, at a circuit court begun and held at the court-house, in the town of Yazoo City, in and for the county of Yazoo and State aforesaid, on the fourth Monday of November, A. D. 1856, the same being the 24th of said month, and a regular term of said court.

Be it remembered, that heretofore, to wit, on the 19th day of November, A. D. 1855, the following complaint was filed in the clerk's office of said circuit court, in words and figures following, to wit:

THE STATE OF MISSISSIPPI,
Yazoo County.

Yazoo Circuit Court—November Term, 1855.

Hamilton M. Wright and John G. Glover, survivors of William V. Davenport, who, with the said Davenport, were merchants and partners, under the firm name of Wright, Williams & Co., exhibit their complaint in the circuit court of said county, where the same is triable and determinable, against James J. B. White.

And thereupon, complainants say that said defendant is indebted to them, as survivors as aforesaid, in the sum of nine thousand eight hundred and one $\frac{65}{100}$ dollars, by open account herewith filed, the whole of which is now due and unpaid. The relief demanded is a judgment for the amount of said account, with interest and costs of suit.

N. G. & S. E. NYE,
Att'ys for Comp't.

Account.

Col. J. J. B. WHITE,

In account with WRIGHT, WILLIAMS & Co. DR.

1855.			
June 9th.	To cash paid our acceptance of your draft fav. James Dick Hill, due 20th Feb'y, 1855	$9,281	44
	Protest on same	3	00
	Interest to date, 109 d's *a* 8 p. c.	224	88
		$9,509	32
	Commissions for advancing, 2 pr. ct.	237	73

Paid clerk's costs in 6th district court in suit of J. D. Hill against us for the above..... 54 60

Amount due as cash, 9th June, 1855 $9,801 65

Errors excepted.
New Orleans, 9th June, 1855.
WRIGHT, DAVENPORT & CO.,
Per RICH'D F. HARRISON.

I hereby waive the issuance and service of process in this cause.
JAMES J. B. WHITE.

Nov. 19th, 1855.

Pleas.

And the defendant, by his attorney, comes and defends, &c., and says the matters and things set forth in plaintiffs' complaints are not true.

(Signed) G. B. WILKINSON,
For Def't.

H. M. WRIGHT et als.
vs.
JAMES J. B. WHITE. } F. 48.

The defendant, for answer to the petition in this case, says that the same and the facts therein alleged are not true, and he traverses and denies the same.

G. R. WILKINSON,
R. S. HOLT,
Att'ys.

And afterwards, to wit, on the 29th day of December, 1856, the following judgment was entered upon the minutes of said court, as follows:

HAMILTON M. WRIGHT, JOHN G. GLOVER, survivors of William V. Davenport, who with the said Davenport were merchants and partners, under the firm name of Wright, Williams & Co.,
vs.
JAMES J. B. WHITE.

This day came the parties by attorney, and issue being joined, it is ordered by the court that a jury come: whereupon came Charles Calvet and eleven others, who being duly elected, tried, and sworn to try the issue joined, upon their oaths do say: We, the jury, find for the plaintiffs, and assess their damages to (10,353 18) ten thousand three hundred and fifty-three dollars and eighteen cents. Whereupon it is considered by the court that the plaintiffs

recover from the defendant the sum so assessed by the jury; also their costs in this behalf expended, &c.

And afterwards, to wit, on the 20th day of January, A. D. 1857, the following fieri facias issued out from the clerk's office of said circuit court in words and figures following, to wit:

Judgment 29th day of Dec'r, 1856, for.....		$10,353 18
Phillips, clerk's costs—		
Docketing this cause.....	37½	
Filing all the papers in this cause.....	25	
Entering appearance, venire facias.....	25	
Receiving and entering verdict.....	12½	
Swearing and empanelling jury.....	12½	
Entering judg't, 2s.; 1 execution, 6s.; seal, 2s.	1 25	
Making up record, $2 50; 1 continuance, 1s.	2 62½	
Certificate to 1 bill of costs, 2s.....	25	
Filing declaration, 2s.; dock'g fieri facias, 2s.	50	
Entering return of fi. fa., 2s.; taxing costs, 2s.	50	
Enrolling judg't vs. defendant.....	1 00	
Copy of interrogatories, 12s.; commission, 6s.	2 25	
		9 50
Perkins, sheriff's costs—		
Returning 1 execution, 2s.....	25	
Docket'g 1 execution, 2s.....	25	
Tax on process.....	3 00	
		3 50
		$13 00

I certify that the above is a true bill of costs.

S. M. PHILLIPS, *Cl'k.*
By W. R. RICHARDSON, *D. C.*

The State of Mississippi to the Sheriff of Yazoo county, greeting:

We command you that of the goods and chattels, lands and tenements, of James J. B. White, lately of your county, you cause to be made the sum of ten thousand three hundred and fifty-three dollars and eighteen cents, which Hamilton M. Wright, John G. Glover, survivors of William V. Davenport, were merchants and partners, under the firm name of Wright, Williams & Co., lately in our circuit court have recovered against him for damages which they have sustained by reason of the non-performance of a certain promise and assumption by the said James J. B. White to the said Hamilton M. Wright and John G. Glover, survivors as aforesaid, lately made, with interest at the rate of six per centum per annum from the 29th day of December, A. D. 1856, until paid; also the

sum of thirteen dollars for costs and charges by them about their suit in that behalf expended, whereof the same James J. B. White is convicted, as appears to us by record, and that you have the said sums of money before the judge of the fifth judicial district of the State aforesaid, at a circuit court to be holden at the court-house of Yazoo county, on the fourth Monday of May next, to render to the said Wright & Glover, survivors as aforesaid, for their damages and costs aforesaid, and have then and there this writ.

Witness the Honorable E. G. Henry, presiding judge of the fifth judicial district of said State, the fourth Monday of November, A. D. , and seal of said court.

[SEAL.]

Issued the 20th day of January, A. D. 1857.

S. M. PHILLIPS, *Clerk.*

By W. B. RICHARDSON, *D. C.*

Upon which said writ of fieri facias the sheriff of Yazoo county made the following endorsement and return, to wit:

Received January 20th, 1857.

M. A. JENKINS, *Sh'ff.*

The within named defendant has neither goods nor chattels, lands or tenements, in my county, whereof the within named sum of money, or any portion thereof, can be made.

January 22, 1857.

M. A. JENKINS, *Sh'ff.*

THE STATE OF MISSISSIPPI,
Yazoo County.

I, S. M. Phillips, clerk of the circuit court in and for the said county and State, do hereby certify that the foregoing pages contain a true and perfect transcript of the record and proceedings had and done in said court in the case therein mentioned, as the same remains of record and on file in my office.

Given under my hand and seal of office, at Yazoo City, this 22d day of January, 1857.

[SEAL.]

(Signed) S. M. PHILLIPS, *Clerk.*

THE STATE OF MISSISSIPPI, *ss.*

I, E. G. Henry, sole presiding judge of the fifth judicial district of the State of Mississippi, which includes the county of Yazoo, do hereby certify that S. M. Phillips, whose signature appears to the foregoing certificate, is, and was at the date thereof, clerk of the circuit court of Yazoo county, that all his acts as such are entitled to full faith and credit, and that his attestation is in due form of law.

Given under my hand and seal, this 22d day of January, 1857.

(Signed) E. G. HENRY. [SEAL.]

THE STATE OF MISSISSIPPI,
Yazoo County.

I, S. M. Phillips, clerk of the circuit court in and for the said county and State, do hereby certify that E. G. Henry, whose signature appears to the foregoing certificate, is, and was at the date thereof, judge of the fifth judicial district of the State of Mississippi, which includes the county of Yazoo, and that all his acts as such are entitled to full faith and credit, and that his attestation is in due form of law.

Given under my hand and official seal, at Yazoo City, this 22d day of January, 1857.

[SEAL.] (Signed) S. M. PHILLIPS, *Clerk.*

Depositions marked O, offered in evidence by Pl'ffs.—Filed 3d December, 1857.

Fourth District Court of New Orleans, State of Louisiana.

To any justice of the peace for the parish of Orleans, greeting:

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE.

Know ye, that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority diligently to examine all witnesses whatever, as well on the part of plaintiff as of the defendant, in a certain suit now pending in the fourth district court of New Orleans, wherein Wright, Williams & Co. are plaintiffs, and J. J. B. White is defendant.

Therefore, we desire you that at certain times and places, by you to be appointed for that purpose, you cause the said witnesses to come before you; that you then and there examine them apart upon their respective corporal oaths first taken before you upon the Holy Evangelists; that you reduce their examinations to writing; and when you shall so have taken them, that you send the same, with this commission, closed up under your seal, to us in our fourth district court, in the city of New Orleans, without delay.

Witness the Honorable John W. Price, judge of our said court, this 11th day of November, in the year of our Lord [SEAL.] 1857, and in the 82d year of the independence of the United States.

(Signed) SAM'L GILMORE,
D'y Clerk.

UNITED STATES OF AMERICA,
The State of Louisiana, Parish of Orleans,
City of New Orleans.

Deposition of one witness, taken and subscribed before me, Charles M. Bradford, second justice of the peace for the parish of

Orleans, in the State of Louisiana, duly elected, sworn, commissioned, and acting as such, on the 14th day of November, A. D. eighteen hundred and fifty-seven, at 9 o'clock a. m. of said day, at the second justice's court in the city of New Orleans, parish of Orleans, in the State of Louisiana, in pursuance of a commission hereto annexed, and to be read in evidence in a certain cause now pending in the fourth district court of New Orleans, wherein Wright, Williams & Co. are plaintiffs, and J. J. B. White is defendant, on the part of the plaintiffs.

James H. Porter, a witness known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn upon the Holy Evangelists and according to law to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose and say and answer as follows, to wit:

I am clerk on board of the Eclipse, and will leave here this evening, to be gone ten days or two weeks. In the fall of last year I was clerk of the Sallie Robinson. We took a lot of cotton on board at J. J. B. White's landing, on the Yazoo river. It was shipped by the overseer of the plantation. This is the same cotton that was seized in this case. The plantation is on the side of the river opposite to Yazoo City, some fifteen or twenty miles above the city, I think. The Sallie Robinson arrived here about 2 o'clock in the morning, but I don't recollect the day of the week. The cotton was consigned to Oakey & Hawkins, and was seized by attachment by one of the deputy sheriffs soon after we got in port.

Cross-examined (by Mr. Mott for intervenor:) I am pretty certain that the bills of lading were on board the boat at the time of the seizure. I think there were three bills of lading signed for that cotton.

Cross-examined by defence: The boat did not get in on Sunday.

(Signed) J. *P.* PORTER.

THE STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

I, Charles M. Bradford, second justice of the peace for the parish of Orleans, duly elected, sworn, commissioned, and acting as such in and for the city of New Orleans, State of Louisiana, do hereby certify and make known that the foregoing deposition of James H. Porter taken before me on the 14th day of November, A. D. 1857, at the time and place in the caption hereof mentioned; that the examinations, responses, and statements of said deponent were reduced to writing by me, and by the said deponent sworn to and subscribed in my presence at the time and place aforesaid.

In testimony whereof I, Charles M. Bradford, second justice of

the peace for the parish of Orleans aforesaid, do hereunto set my hand, at the city of New Orleans, in the State of Louisiana, this 14th day of November, A. D. 1857.

(Signed) C. M. BRADFORD,
2d Justice of the Peace for Parish of Orleans.

Costs:	Commissioner's fees	$3 50
	Certificate, constable's fees, notices, and subpœnas	2 50
	Paid by plaintiffs	$6 00

(Signed) C. M. BRADFORD,
2d J. of the P. for the Parish of Orleans.

Record marked F, offered in evidence by Plaintiffs.—Filed December 3d, 1857.

No. 10,628.

This indenture, made and entered into this eighteenth day of January, in the year of our Lord one thousand eight hundred and thirty-six, between Henry Hagan and Elizabeth, his wife, of the county of Yazoo, Hiram Hagan and Martha, his wife, of the same county, and Solomon Hagan, of the county of Yazoo aforesaid, and State of Mississippi, of the first part, and James J. B. White, late of Richland district, in South Carolina, and now of Washington county, in the State of Mississippi, witnesseth:

That the parties of the first part, for and in consideration of the sum of forty thousand dollars, current money of the United States, to them secured to be paid by the party of the second part, at and before the ensealing and delivering of these presents, the receipt whereof is hereby acknowledged, they, the said parties of the first part, have given, granted, bargained and sold, and by these presents doth grant, bargain, sell, and convey, unto the said James J. B. White, and to his heirs and assigns, in fee simple, the following named tracts, parcels, or pieces of land, situate as follows, viz: Section number twenty-five, and the south half and the northeast quarter of section number twenty-six, and the west half of the northwest quarter of the same section; and the north half of the east half of the northwest quarter of same section; and also the north half of section number twenty-seven, and the west half of the southwest quarter, and the north half of the east half of the southwest quarter of said section number twenty-seven; the east half of the southeast quarter of section number twenty-eight; the southeast quarter of section number twenty-two; the west half of the northwest quarter of section number twenty-three; the west half of the southwest quarter of section number fourteen; the east half of the southeast quarter of section number twenty-four; and

the northeast quarter of section number twenty-six—all of which said lands are in township No. twelve, of range three west, in the county of Washington, in the said State of Mississippi. Also lots Nos. four, five, and six, of section number thirty, and lots number four and five, of section number nineteen, in township number twelve of range number two west, in the county of Yazoo and State of Mississippi aforesaid, and in the Mount Salus land district, in said State:

To have and to hold the above granted and bargained premises unto him, the said James J. B. White, and to his heirs and assigns, forever, in fee simple; and they, the said parties of the first part hereto, doth hereby covenant, promise, and agree to and with the said James J. B. White, that they, the said parties of the first part, will warrant and forever defend a free, clear, and undisputable estate in fee simple in and to the above granted and bargained premises unto him, the said James J. B. White, and to his heirs and assigns, forever, in fee simple, free and clear from all manner of claims or interruptions by, through, or from, or under them, the said parties of the first part, or their heirs, or of any person claiming by, through, from, or under them, or in any other way or manner whatsoever, will warrant and forever defend.

In testimony whereof, the parties of the first part to this indenture have hereunto set their hands and affixed their seals, on the day and year first in this indenture written.

All interlineations and erasures made before signing, and they only two in number.

(Signed) HENRY HAGAN. [SEAL.]

her
ELIZABETH ⋈ HAGAN. [SEAL.]
mark.

his
HIRAM ⋈ HAGAN. [SEAL.]
mark.

her
MARTHA ⋈ HAGAN. [SEAL.]
mark.

his
SOLOMON ⋈ HAGAN. [SEAL.]

STATE OF MISSISSIPPI,
Yazoo County, ss.

Personally appeared before me, James M. Buntin, esquire, judge of the probate court in and for said county, Henry Hagan and Hiram Hagan, who severally acknowledged that they signed, sealed, and delivered the foregoing deed as their voluntary act and deed, for the pursoses therein mentioned, on the day and year therein named; and also Elizabeth Hagan, wife of the said Henry Hagan, and Martha Hagan, wife of the said Hiram Hagan, who, after being examined separate and apart from their said husbands,

acknowledged that they signed, sealed, and delivered the foregoing deed on the day and year therein named, for the purposes therein mentioned, without any fear, threats, or compulsion from their said husbands.

Given under my hand and seal this 19th day of January, A. D. 1836.

JAMES M. BUNTIN, [SEAL.]
Judge of Probate Yazoo County, Mississippi.

STATE OF MISSISSIPPI,
Yazoo County.

Personally appeared before me, James M. Buntin, esquire, judge of the probate court in and for said county, Solomon Hagan, who acknowledged that he signed, sealed, and delivered the following deed on the day and year therein named, for the purposes therein mentioned.

Given under my hand and seal this 19th day of January, A. D. 1836.

J. M. BUNTIN, [SEAL.]
Judge of Probate Yazoo County, Miss.

Filed for record 7th March, 1836, and recorded 29th April, 1836.

J. S. YOUNG, *P. C.*

THE STATE OF MISSISSIPPI,
Yazoo County, &c.

I, John M. Hollingsworth, clerk of the probate court of said county, certify that the above and foregoing three pages contain a true and correct transcript of the instrument of writing therein mentioned as fully as the same appears of record in my office, in book F, pages 20 and 21, of records of deeds of said county.

In testimony whereof, I have set my hand and the seal of said court, at Yazoo City, this 30th day of May, 1857.

[SEAL.]

J. M. HOLLINGSWORTH, *Clerk.*

(Signed) By JOHN BRUMFIELD, *D'y Cl'k.*

THE STATE OF MISSISSIPPI,
Yazoo County, &c.

I, Robert B. Mayes, judge of the probate court of said county, certify that J. M. Hollingsworth, whose name appears to the foregoing certificate, is now, and was at the date of the same, clerk of the probate court of said Yazoo county, duly elected, qualified and commissioned, and that John Brumfield, whose genuine signature agpears to said certificate, is now, and was at the time of signing the same, deputy clerk of the probate court of said county, duly appointed and qualified by said court; and further, that his said certificate is in due form of law.

Given under my hand and seal this 30th day of May, 1857.

(Signed) R. B. MAYES, *Probate Judge.*

THE STATE OF MISSISSIPPI,
Yazoo County, &c.

I, John M. Hollingsworth, clerk of the probate court of said county, certify that R. B. Mayes, whose genuine name appears to the above certificate, is now, and was at the time of signing the same, judge of the probate court of Yazoo county, (sole and presiding,) duly elected, sworn, and commissioned, and that his official acts in the premises are entitled to full faith and credit in judicature and thereout.

In testimony whereof, I hereto set my hand and the seal of said court, at Yazoo City, this 30th day of May, 1857.

[SEAL.]

J. M. HOLLINGSWORTH, *Clerk.*

(Signed) By JNO. BRUMFIELD, *D'y Clk.*

Governor of the State of Mississippi, to all who shall see these presents, greeting:

Be it known, that R. P. Mayes, whose name is subscribed to the annexed certificate, was, on the day of the date hereof, judge of the probate court of Yazoo county, and that John H. Hollingsworth, whose name is subscribed to the annexed certificate, was, on the day of the date thereof, clerk of the probate court of Yazoo county, in the State of Mississippi; that their attestation to the annexed certificates are in due form of law, and made by the proper officers, and that full faith and credit are due to all their official acts.

In testimony whereof, I have caused the great seal of the State to be hereunto affixed. Given under my hand at the city of Jackson, this second day of June, A. D. 1857.

[SEAL.]

By the Governor:

(Signed) JOHN J. McRAE.

(Signed) A. B. DILWORTH, *Sec'y of State.*

Document G, offered in evidence by Plaintiffs.—Filed December 3d, 1857.

No. 10,628.

Received of Messrs. N. G. and S. E. Nye eighteen dollars, in payment of the costs taxed and fee for transcript in the case of H. M. Wright et al. vs. James J. B. White, in Yazoo circuit court, this 23d day of January, 1857.

S. W. PHILLIPS, *Clerk.*

(Signed) By W. R. RICHARDSON, *D'y Clk.*

Document H, being testimony taken under Commission. Offered in Evidence by Defendant.—Filed 3d December, 1857.

(By the Court.)

The court excludes all evidence of ownership of the plantation and slaves, on the ground that the same cannot be proved by parol.

(Signed) J. W. PRICE, *Judge.*

Commission.

Fourth District Court of New Orleans.—The State of Louisiana.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

To J. H. Lawrence, jr., Commissioner for Louisiana, in the city of Yazoo, State of Mississippi, greeting:

Know ye, that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority, diligently to examine all witnesses whatever, as well on the part of the plaintiffs as of the defendant, in a certain suit now pending in the fourth district court of New Orleans, wherein Wright, Williams & Co. are plaintiffs, and J. J. B. White is defendant:

Therefore, we desire you, that at certain times and places by you to be appointed for that purpose, you cause the said witnesses to come before you; that you then and there examine them apart upon their respective corporal oaths, first taken before you upon the Holy Evangelists; that you reduce their examinations to writing, and cause the witnesses to sign the same; and when you shall so have taken them, that you send the same, with this commission, closed up under your seal, to us, in our fourth district court, at the city of New Orleans, without delay.

Witness the Honorable M. M. Reynolds, judge of our said court, this 12th day of March, in the year of our Lord one [SEAL.] thousand eight hundred and fifty-seven, and in the 81st year of the independence of the United States.

(Signed) JAS. B. MURTAGH, *D'y Clerk.*

Fourth District Court of New Orleans.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

Interrogatories to be propounded to Patrick O'Donnell and Eliza B. Rundle, who reside in the county of Yazoo, State of Mississippi, to be examined on the part of the defendant.

1st Do you know the parties to the present suit? If yea, how long have you known them?

2d. Do you or do you not know anything of the Topeka plantation? If yea, state where the same is situated, to whom the same belongs, and who has the management thereof.

3d. Where was the cotton raised that was seized in the present suit?

4th. Do you or do you not know anything how the accounts of the Topeka plantation were kept, in whose name, and to whom credit was and is given for supplies? If yea, state the same fully.

5th. To whom does the cotton belong that was seized in the present suit? Did or did not the defendant have any interest in the same?

6th. How long have the present owners and possessors of said plantation and slaves been in possession of the same?

(Signed) THOS. N. *PRICE*,
Att'y for Def't by appointment of Court.

The plaintiffs except to the foregoing interrogatories; to the 2d, as inquiring into the title of real estate by parol. All other exceptions waived.

Cross-interrogatories.

1st. What is your name, age, and occupation, or profession? Where do you reside, and how long have you there resided? Have you any interest in this suit, direct or indirect? Have you any interest in the cotton seized?

2d. What is the source of your knowledge of the evidence you have given in answer to the direct interrogatories? Have you ever been upon the Topeka plantation? Do you reside on it or near it? Does not the defendant reside upon it? Does he exercise any control or management upon it? Is he not supported by its produce? If not, how is he supported? Does he not spend his time there, and exercise the general control over the estate?

3d. Are you familiar with the accounts of said plantation? If yea, how did you become so? How long a connection has defendant had with said plantation, either as occupant or otherwise? Has there been any change in reference thereto during fifteen years? If yea, who and what?

4th. What do you know of the cotton seized in this suit? Have you seen it since its seizure? When and where? What interest has or had P. O'Donnell therein? How did he acquire the same? Do you know anything of a draft drawn by the defendant on O'Donnell, or Oakey & Hawkins, or Oakey, Hawkins & Co., for $5,000, or more or less, having reference to this cotton? Did not O'Donnell advance his credit to the defendant, J. J. B. White, in some form, predicated upon his receiving the produce of the Topeka plantation in whole or in part? What business transactions has said O'Donnell had with defendant during the last year? Was not the shipment of the cotton attached made by W. L. Clark to Oakey, Hawkins & Co., for account of O'Donnell, to carry out an arrangement previously entered into by defendant with O'Donnell? Have not the proceeds of said cotton since its bonding gone to said O'Donnell in satisfaction of a claim against the defendant, in whole or in part?

(Signed) CLARKE & BAYNE,
For Plaintiffs.

No cross.
(Signed) MOTT & FRASER,
For Intervenors.

4th District Court of New Orleans.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE.

Interrogatories to be propounded to George W. Woodberry and William L. Clock, who reside in Yazo county, and State of Mississippi, to be examined on the part of the defendant.

1st. Do you know the parties to this suit? If yea, how long have you known them?

2d. Do you or do you not know anything of the Topeka plantation? If yea, state who is in possession of the same as owner, and to whom do the slaves belong that cultivate the same? State the same fully.

3d. State the sources of your knowledge of the matters of which you testify.

4th. Who was, and who is, the owner of the cotton seized in this case?

5th. In the case the plaintiff a lot of cotton raised on the Topeka plantation as the property of J. J. B. White? State all you know that will benefit the defendant.

6th. How long have the present owners or possessors of said plantation and slaves been in possession of the same?

(Signed) THOS. N. PEIRCE,
Attorney by appointment of Court.

Cross-interrogatories.

The plaintiffs except to the 2d interrogatory as inquiring into the title to real estate and slaves by parol; to the 5th as leading; and they renew all other legal exceptions.

1st. What is your name, age and occupation, or profession? Where do you reside, and how long have you there resided? Where is the Topeka plantation?

2d. Where does the defendant reside? Does he not reside upon the Topeka plantation? Does he not manage the same? When you speak of the possession of Topeka plantation, what do you mean thereto?

3d. Had you anything to do with the shipment of the cotton seized in this cause? If yea, what? From whom did you receive the same, and where?

4th. Have you any interest, direct or indirect, in this suit, or in the cotton seized? If yea, state the same.

5th. Who resided on the Topeka plantation during the year 1856? Did not the defendant? Did he not place the cotton in suit in your hands for shipment? If not, who did? Who directed in reference thereto?

6th. If you speak of the Topeka plantation and slaves, state from what source you derived your knowledge thereof. Did you live near it or upon it? Are you overseer thereof? If yea, who gives you directions or orders? How long have you acted in that capacity? Do you know P. O'Donnell? Where does he live? What is his business? What had he to do with the cotton seized in this cause? Did he purchase the same? If yea, from whom? For what consideration? Did he pay therefor? To whom?

No cross-inter'ies.

(Signed) MOTT & FRASER,
For Intervenors.

Depositions of Witnesses, produced, sworn and examined by virtue of the annexed commission on the 26th day of March, 1857, in the town of Yazoo City, in the county of Yazoo, and State of Mississippi, before me, J. H. Lawrence, the commissioner (named in the annexed commission,) in a certain cause now pending in the fourth district court of New Orleans, in the State of Louisiana, between Wright, Williams & Co., plaintiffs, and J. J. B. White, defendant, and Oakey, Hawkins & Co., intervenors on the part of the defendant.

William L. Clark, being produced and sworn, answers as follows to the interrogatories in this cause:

To 1st interrogatory he answers: I do not know any of the parties but J. J. B. White, the defendant; I have known him since 1852.

To 2d int. he answers: I know the Tokeba plantation; Mrs. Rebecca J. White is in the possession of the place; part of the slaves that are cultivating the place belong to Mrs. S. C. W. Faust, one fourth of them, and the balance to Mrs. Rebecca J. White.

To the 3d int'y he answers: I am the overseer of the place, and have been so ever since January, 1854, to the present time, and have the control of the slaves, and I obtained my knowledge of the matters to which I have testified in that capacity.

To the 4th interrogatory he answers: I do not know who the cotton belonged to that was seized, if there was any seized of my own knowledge. I have not the bill of lading of the cotton made on the Tokeba plantation; was shipped by me in the fall of 1856; it was owned by Mrs. Rebecca J. White and Mrs. S. C. W. Faust; the cotton was marked Tokeba. I speak of the whole crop shipped, and not of any particular shipment; it was shipped by

me; it was shipped to Oakey, Hawkins & Co., at New Orleans, for and on account of P. O'Donnell.

To 5th int. he answers: By reason of the blank left in this interrogatory, it is unintelligible to me, and I can't, therefore, answer it.

To the 6th int'y he answers: I do not know further back than January, 1852, and they have been in possession from that time to the present, to my knowledge.

To 1st cross-int'y he answers: My name is William L. Clark; my age is 32 last birth-day; my occupation is an overseer; I reside in Yazoo county, on the Tokeba plantation; lies in Yazoo county, on both sides of the Yazoo river; the choice land on the west side of the river, about three miles above Yazoo City.

To 2d cross-interrogatory he answers: The defendant resides on the Tokeba plantation; he is the husband of Rebecca J. White, and the trustee of her property; as such he managed the place. When I speak of the possession, I mean that J. J. B. White, and his wife, Rebecca J. White, and children, live on the place, and I as the overseer; and that J. J. B. White, as trustee for his wife, managed the place, his wife being the owner.

To 3d cross-interrogatory he answers: As before stated in my answer to the 4th int. in chief, I shipped the crop of 1856; I superintended the planting, gathering and ginning of the crop, and shipped it at the Tokeba plantation, landing direct to New Orleans, and took the bill of lading for the same direct to New Orleans, except a portion of the crop, for which a bill of lading was taken by P. O'Donnell.

To 4th cross-int. he answers: I have no interest, direct or indirect, in this suit, and none in any cotton seized as I know of, and certainly none in the crop raised on the Tokeba plantation.

To the 5th cross-int'y he answers: The first portion of this interrogatory I have already answered; I recollect particularly that in the fall of 1856, probably in November, I shipped a lot of 154 bales of cotton, marked Tokeba, from the Tokeba landing, consigned to Oakey, Hawkins & Co.; this cotton was raised on the Tokeba plantation, and was shipped for and on account of P. O'Donnell, and that was stated in the bill of lading; the cotton was shipped on the steamers Sallie Robinson and in the absence of J. J. B. White I had been directed by P. O'Donnell not to ship that lot of cotton without his instruction; but Doctor Woodberry was shipping at the same time some of P. O'Donnell's on the same boat, and told me if I would ship it, he would take the responsibility, and it was accordingly shipped by me as above stated, for and on account of P. O'Donnell.

To 6th cross-interrogatory he answers: I do know P. O'Donnell; he lives in Yazoo City; he is a merchant; I do not know what he has to do with the cotton seized in this case, if there was any

seized on; whether he purchased it or not, or whether he ever paid for it or not, or that he ever got it from any one; the cotton was shipped for and on account of P. O'Donnell, marked Tokeba. The balance of this int'y I have already answered.

(Signed) W. L. CLARK.

Sworn to and subscribed before me, on the day and at the date just aforesaid.

(Signed) J. H. LAWRENCE,
Commissioner.

G. W. Woodberry, being produced and sworn, answers as follows to the interrogatories propounded in this cause:

To 1st interrogatory he answers: I know J. J. B. White and Mr. Cockburn, of the firm of Oakey, Hawkins & Co.; I have known J J. B. White for a number of years.

To 2d interrogatory he answers: I know the place Tokeba, and reside on the adjoining plantation, and the landing of the Tokeba plantation is only separated from my landing by the bayou, which is about twenty feet wide. Mrs. R. J. White and the children are generally understood to be the owners; they, together in connection with J. J. B. White, are in possession of the same; the slaves belong to Mrs. R. J. White and children, and Mrs. S. C. W. Faust.

To 3d interrogatory he answers: I am very intimate with J. J. B. White, R. J. White and S. C. W. Faust, and I am a near neighbor of them. From these facts and from general reputation, I obtained my information.

To 4th int'y he answers: Mrs. R. J. White and Mrs. S. C. W. Faust were the owners of all the cotton raised on the Tokeba plantation in 1856, so far as I know.

To 5th int'y he answers: This interrogatory being unintelligible, I cannot answer it.

To 6th int'y he answers: I do not know how long, but they have been in possession for a number of years; at least fifteen years.

To 1st cross-int'y he answers: My name is George W. Woodberry; I am 46 years of age; I am a planter, in Yazoo county, on the Yazoo river; I have resided there since the 1st of January, 1855, to the present time. The Tokeba plantation is adjoining my place, and below me on the Yazoo river.

To 2d cross-int'y he answers: He resides on the Tokeba plantation. He has always told me that he managed the place as agent for his wife and children, and Mrs. S. C. W. Faust, his sister. When I speak of the possession of the Tokeba plantation, I mean that J. J. B. White and his family reside there.

To 3d cross-int'y he answers: Some time in the fall of 1856, I

was shipping 36 bales of cotton, belonging to P. O'Donnell, from my landing on the Yazoo river, and there was at the Tokeba landing, very near mine, 154 bales of cotton, which was under the control of P. O'Donnell. Col. J. J. B. White was absent, and his overseer, W. L. Clark, was at my landing during the time I was shipping the cotton on the Sallie Robinson. I prevailed on Mr. Clark, against his wishes, to ship this cotton, about 154 bales, as he said it was under the control of P. O'Donnell, as we could get it shipped cheaper than usual. I assumed the responsibility, and Clark shipped it by my direction for and on account of P. O'Donnell.

To 4th cross-int. he answers: I have no interest, direct or indirect, in this suit.

To 5th cross-int'y he answers: J. J. B. White and family and Mr. Clark resided on the Tokeba plantation during that time; he did not place any cotton in my hands for shipment. All I know about it is stated in my answer to the 3d cross-interrogatory.

To 6th cross-interrogatory he answers: I have answered all the first part of this interrogatory before. In relation to the latter part of this interrogatory, I know P. O'Donnell; he lives in Yazoo City; he is a merchant; he had the management or control of it; I do not know that he purchased the said cotton; I know that nearly all of the plantation supplies for Tokeba was furnished by P. O'Donnell. As to the balance of the latter part of this interrogatory, I know nothing.

(Signed) GEO. W. WOODBERY.

Sworn to and subscribed, on the day and at the place first aforesaid.

(Signed) J. H. LAWRENCE,
Commissioner.

E. B. Rundle, being produced and sworn, answers as follows to the interrogatories propounded in this cause:

To 1st int'y he answers: I know J. J. B. White and Cockburn, of the firm of Oakey, Hawkins & Co. I have known J. J. B. White since 1844; I have known Cockburn some two or three years.

To 2d int'y he answers: I know the Tokeba plantation; it is situate in Yazoo county, on both sides of the Yazoo river, the cleared land being on the west side of the river. I always looked upon it as belonging to R. J. White and her children. My reasons for it is, that the account with the Tokeba plantation was always kept in the name of J. J. B. White, agent for Rebecca J. White. J. J. B. White, as the agent of Rebecca J. White, has the management of the Tokeba plantation.

To 3d int'y he answers: I do not know.

To 4th int'y he answers: I know how the account with the Tokeba plantation was kept with P. O'Donnell, who was the regular merchant of the place; he furnished the greater portion of the plantation supplies; also how the town accounts for family supplies incurred by Mrs. R. J. White and J. C. W. Faust. The account was kept, as before stated, in the name of J. J. B. White, agent for Rebecca J. White. The supplies were furnished on the credit of Mrs. R. J. White, and on a pledge of the crops and on the faith of the property in her possession.

To 6th int'y he answers: White and family have been in possession of the same property for thirteen years, to my knowledge; how much longer I do not know.

To 5th int'y he answers: I do not know; I do not know of J. J. B. White having any interest in any cotton.

To 1st cross-int'y he answers: My name is Elias B. Rundle; my age is thirty-eight years; my occupation is a book-keeper; I reside in Yazoo City; I have lived here and in the neighborhood about thirteen years. I have no interest in this suit, direct or indirect; I have no interest in the cotton.

To 2d cross-int. he answers: My information is derived from being the book-keeper for P. O'Donnell; I have been his book-keeper for eleven years; knows R. J. White; has been doing business there for nine years with him; I have been on the Tokeba plantation; I reside three miles from it; J. J. B. White resides on the plantation; he does exercise a control over it; he is supported by its produce; he does spend his time there, and exercises a general control over the estate.

To 3d cross-int'y he answers: I am familiar with them so far as they have been kept with P. O'Donnell, from being the book-keeper of P. O'Donnell for thirteen years; to my knowledge he has been the occupant of said plantation here much longer; I do not know; I cannot say there has been any change in the last 15 years in reference thereto.

To 4th cross-int'y he answers: I know that there was 154 bales of cotton shipped on the Sallie Robinson in the fall of 1856; the bill of lading was signed for the cotton as marked, Tokeba. I do not know certain that it was the cotton seized in this suit; I have not seen it since its seizure; if the cotton seized was the cotton, 154 bales, shipped on the Sallie Robinson, the whole of it was shipped on his, P. O'Donnell's, account and credit; I do not know *if* a draft drawn by J. J. B. White on any person in reference to this cotton; I know of a draft drawn by J. J. B. White, agent, in favor of P. O'Donnell, on Oakey, Hawkins & Co., for $9,999 92, due the 4 | 7th of January, 1857; the draft was sent to Oakey, Hawkins & Co., and discounted, and the proceeds thereof placed to the credit of P. O'Donnell with them; these 154 bales of cotton were shipped to meet the said draft as far as it would go; the draft

was given to pay the balance due to P. O'Donnell by Mrs. Rebecca J. White for supplies furnished by O'Donnell for the Tokeba plantation and for accounts paid by said O'Donnell for Mrs. White and Mrs. Faust; he, O'Donnell, never advanced J. J. B. White anything, nor did he advance him credit or cash predicated on his security, the products of the Tokeba plantation, or any other way.

He has had no business transactions with the said J. J. B. White, except as agent for Mrs. Rebecca J. White, during this last year. The cotton shipped by Clark was not shipped by him to carry out an arrangement previously entered into by O'Donnell and J. J. B. White.

The proceeds of said cotton since its bonding have not gone to said O'Donnell in satisfaction of a claim against the defendant in whole or in part; they have gone to the credit of O'Donnell to pay as far as they would go to pay the draft drawn by J. J. B. White, as agent, as is stated in the former part of this answer.

(Signed) ELIAS B. RUNDLE.

Sworn to and subscribed before me, the day and at the place first aforesaid.

(Signed) J. H. LAWRENCE,
Commissioner.

P. O'Donnell being produced and sworn, answers as follows to the interrogatories propounded to him in this case:

To 1st int'y he answers: I have known J. J. B. White for fifteen years or more; I have known Hawkins and Cockburn for at least three years, and I am acquainted with the plaintiffs.

To 2d int'y he answers: I know the Tokeba plantation; it is on the Yazoo river, in Yazoo county; it belongs to Mrs. Rebecca J. White and children, and is managed by J. J. B. White, as agent for Mrs. Rebecca J. White and S. C. W. Faust.

To 3d int'y he answers: I do not know certain, and I know that there was 154 bales of cotton shipped on the Sallie Robinson in the fall of 1856; the bill of lading was signed for the cotton as marked, Tokeba; I do not know certainly that it was the cotton seized in this suit; I have not seen it since it was seized. If the cotton seized was the 154 bales shipped on the Sallie Robinson, the whole of it was shipped on my account, and so written across the bill of lading.

To 4th int'y he answers: The account is kept in my books in the name of J. J. B. White, agent for Mrs. Rebecca J. White; credit is given to the property owned by Mrs. Rebecca J. White and children, J. J. B. White as her agent, and on the pledge of the crops raised on the plantation.

To 5th int'y he answers: I have answered the former part of this interrogatory in my answer to the 3d interrogatory; the defendant did not have any interest in this cotton.

To 6th int'y he answers: They have been in the possession of this property for ten years or more.

To 1st cross-int'y he answers: My name is P. O'Donnell; I reside in Yazoo City; my age is 41; my occupation, merchant; I have resided in Yazoo City eighteen years; no further interest than that the proceeds of that cotton have been applied to the payment of the said draft; if it is the 154 bales of cotton shipped on the Sallie Robinson, I have the same interest as I have stated.

To 2d cross-int'y he answers: The source of my information is my business relations with the parties; I have been often on the Tokeba plantation; I reside within three miles of it; the defendant resides upon it; he does not exercise any control except as agent; he is supported by its produce, and spends the greater portion of his time there, and exercises as agent a general control over the place.

To 3d cross-int'y he answers: I am familiar with the account of the place, as a general merchant of the place for ten years and upwards; there has been no change thereto in fifteen years.

To 4th cross-int'y he answers: I have already answered as to what I know of the cotton seized in this suit, and have not seen it since its seizure; I have no interest therein except what I have stated; I acquired that interest, if I have any, as follows: during the past year, 1856, J. J. B. White, as agent, drew his bill of exchange on Oakey, Hawkins & Co., payable to my order, on the 4 | 7th of January, 1857, for $9,999 92; this draft was given to close the account against J. J. B. White, agent for R. J. White, for plantation supplies, and account against Rebecca J. White and S. C. W. Faust paid by me; said draft was sent to Oakey, Hawkins & Co., by them discounted, and proceeds placed to my credit; the 154 bales of cotton shipped on the Sallie Robinson by W. L. Clark, from the Tokeba plantation, marked Tokeba, was shipped as per bill of laning to Oakey, Hawkins & Co., New Orleans, for and on my account; I know of nothing of any draft drawn by J. J. B. White, except as agent, relative to this cotton; I did not advance anything to White individually, predicated upon my receiving the produce of the Tokeba plantation in whole or in part; I have had no business transactions with the defendant individually during the last year; the 154 bales of cotton shipped by Clark was not shipped to carry out any previous engagement made with White individually, but was shipped, as before stated, to meet the draft drawn by White, as agent; the proceeds of said cotton since its bondery have not gone to me in satisfaction of a claim against the defendant, either in whole or in part, but have been applied, so far as they would go, to the draft drawn by White, as agent.

(Signed) P. O'DONNELL.

Sworn to and subscribed on the day and at the place first aforesaid.

I, J. H. Lawrence, commissioner, do hereby certify, that W. L. Clark, G. W. Woodbery, C. B. Rundle, and P. O'Donnell, the deponents, were by me severally sworn to declare the truth on the questions put to them in this cause; that the interrogatories and cross-interrogatories were produced to them, and their answers thereto taken in writing, and subscribed by them respectively in my presence, on the day and at the place in that behalf first aforesaid. Given under my hand and seal, this 26th day of March, 1857.

(Signed) J. H. LAWRENCE, [SEAL.]
Commissioner.

Fees of commissioner $25 00

Received payment of J. J. B. White, the defendant.
(Signed) J. H. LAWRENCE,
Commissioner.

Document 1, offered in evidence by Defendant.—Filed 3d December, 1857.

No. 10,628.

Whereas James J. B. White, on the 19th day of November, 1839, executed a deed of trust to Isaac H. Hilliard and William Ley, for certain lands, slaves, and other property therein mentioned, and hereinafter more particularly described, which deed of trust was duly proven and recorded in Yazoo and Washington counties, State of Mississippi; and whereas said deed of trust was made to secure certain debts and responsibilities of said White therein mentioned, and more particularly to secure and save harmless William Hardeman against all loss or damage which he might be subject to, in consequence of his being the endorser and surety of said James J. B. White. And whereas, after making the above deed of trust as aforesaid, to wit, on the 2d May, 1840, the said James J. B. White entered into an agreement with Henry Hagan and Hiram Hagan, to whom he owed a debt of about $25,000 for land sold by them, and Solomon Hagan to said White, on which said land they still retained their vendors' lien, and as additional and cumulative security, their said debt was also embraced in the foregoing deed of trust, by which agreement it was stipulated that the said James J. B. White should, in satisfaction of the debt due by him to them, pay the said Hagans twenty bales of cotton out of the crop of 1840, and 100 bales of merchantable cotton annually thereafter, at twelve and a half cents per pound, until said debt was satisfied; but if said cotton brought more than 12½ cents per pound, said White was to have the benefit thereof, and to have a credit accordingly; said agreement, however, was made, reserving to said Hagans the vendors' equitable lien for the payment of the

purchase money, and also reserving to them the benefit of the additional or cumulative security afforded by said deed of trust, which security they agree to accept, not as a substitute or waiver of their equitable lien, but as cumulative or additional thereto. But if the other debts mentioned in said deed of trust were not paid, and said property had to be sold for their payment, it was to be sold subject to the debt of said Hagans, as aforesaid, and subject to the said agreement with said White, to pay the sum by annual instalments of 100 bales of cotton, as aforesaid.

And whereas by the terms of said deed of trust *of trust the said deed of trust*, the said trustees, Hilliard and Ley, or either of them, (if the debt mentioned therein were not paid,) should, when requested or ordered to do so by said William Hardeman, proceed and sell, for cash, on the premises, all the property mentioned in said deed of trust, or such part as might be deemed necessary to pay said debts, said trustees, or trustee, first giving twenty days' notice of the time and place of sale.

And whereas the said William Hardeman ordered and requested the said Isaac Hilliard, one of said trustees, to proceed and sell said property, as required in said deed of trust, to pay off and satisfy certain debts of said White on which he was endorser and security, and the said Isaac Hilliard, in conformity with said request, and in pursuance of the power and authority in him vested, did give notice, by public advertisement in the Yazoo Whig, a newspaper printed in Yazoo City, twenty days before the time of sale, that he would sell said property on the premises, for cash, on Monday, the 1st day of March, 1841, according to the terms of said deed of trust; and whereas, in pursuance of said notice, the said Isaac Hilliard did proceed to sell said property on the premises, on Monday, the first day of March, 1841, he then and there first proclaiming that said property would be sold subject to the debt of the said "Hagans"—that is, that the purchaser would take said property incumbered with said Hagans' debt, but would have the privilege of paying off said debt in the same manner that said White had; at which sale, Harry R. W. Hill being the highest and best bidder therefor, said property was struck off to him, and he became the purchaser thereof for the sum of $15,000, as follows: Said Hill purchased and bid off the plantation and land mentioned in said deed of trust, containing two thousand acres more or less, for the sum of three thousand seven hundred dollars, it being the land on which said White resides; he bid off and purchased the other property, as follows: the tract of land on Deer creek, Washington county, containing 324 $\frac{36}{100}$ acres, for two hundred dollars; also the following slaves:

First. Family of negroes, consisting of Sambo, Abram, Tyller, Catey, John, Steamboat, Celia, Dentry, (said White having a life interest therein,) for one thousand dollars.

Second. Family of negroes, consisting of Primus, Sabrina, Ro-

meo, Andrew, July, (said White having a life interest therein,) for five hundred dollars.

Third. Family—Noman Tarr, Tinah, Seina, Riva, Elsey, Harriet, Jim, Isabella, Tom, Sylvia, Charlow, Benkey, and Benjamin, for thirteen hundred dollars.

Fourth. Family, consisting of Jacob, Wackey, Dinah, Hannah, Carlos, Guast, for seven hundred dollars, (said White having a life interest therein.)

Fifth. Family, consisting of Charles, Clarissa, Cato, Bena, Judy, Amina, Sophia, and Caroline, for one thousand dollars, (said White having a life interest therein.)

Sixth. Family, consisting of Bristol, Norman, Nanny, Rose, Molly, Fanny, Charlotte, and Scipio, for one thousand dollars, (said White having a life interest.)

Seventh. Family, consisting of Sucky, Ellick, Betty, William, and Jack, for five hundred dollars, (said White having a life interest therein.)

Eighth. Family, consisting of Jenny, Crekubee, Peter, (said White having a life interest therein,) for six hundred dollars.

Ninth. Fortune, (said White having a life interest therein,) for one hundred dollars.

Also the following slaves, in which said White has a fee simple interest, to wit: Alfred and Elsey, for twelve hundred dollars; Toney and Jinsey, for two hundred dollars; and Burdeaux for one hundred dollars.

Also, said White's undivided interest of one-fourth in the following slaves: Tom, Phill, and Bacchus, for three hundred dollars. Also, the eight horses, for two hundred dollars; twelve mules, for five hundred dollars; fifteen head of cattle, for one hundred dollars; two hundred heads of hogs, for three hundred dollars; 10,000 pounds pork for four hundred dollars; one wagon, one cart, blacksmiths' tools, and carpenters' tools, for one hundred dollars; two dining tables, two card tables, two dozen chairs, 1 sofa, two rocking chairs, one carpet, seven mattresses, 1 dozen sheets, 1 dozen blankets, 2 suits bed curtains, 7 window curtains, four bedsteads, 2 pairs shovels and tongs, 2 pairs brass and-iron, 4 cast iron and-irons, 1 dining and tea set, French China and Liverpool ware, fifty pieces, and 1 piano, for the sum of five hundred dollars.

Also the kitchen furniture, consisting of 1 doz. oven pots, 1 spider, 6 Dutch iron, one kitchen clock, 1 frying-pan, 1 waffle-iron, and 1 tea-kettle, for fifty dollars; one four-horse carriage, for one hundred dollars, and one barouche, for fifty dollars.

Now, therefore, in consideration of the said sums of money so bid as aforesaid for said land, slaves, and other property above mentioned, and the receipt of which I hereby acknowledge to have been paid to me by said Hill, I, Isaac Hilliard, trustee as aforesaid, do hereby bargain, sell, and convey, and by these presents

have bargained, sold, and conveyed to the said Henry R. W. Hill, and his heirs forever, the before-mentioned land, lying in Washington county, and which land is particularly described and set forth in the said deed of trust executed by the said James J. B. White, to said Isaac Hilliard and William Levy, and dated 19th day of November, 1839, to which deed, for a more particular description, reference is hereto had—the land herein sold and conveyed to said Hill being precisely the same therein mentioned and described. I also, for the consideration aforesaid, have bargained, sold, and conveyed, and by these presents bargain, sell, and convey, to the said Harry R. W. Hill, all the interest of said White in and to the slaves and other property sold by me as aforesaid, and bid off by said Hill, and hereinbefore mentioned and described, to have and to hold all the aforesaid lands and slaves and other property to the said Harry R. W. Hill and his heirs forever. The said Hilliard hereby conveys only such interest as he was authorized to convey by the said deed of trust, he not covenanting or warranting the title to the said property.

In witness whereof, the said Isaac Hilliard hath hereunto set his hand and affixed his seal the second day of March, 1841.

(Signed) ISAAC H. HILLIARD.

THE STATE OF MISSISSIPPI,
Warren County.

Personally appeared before me, Harvey M. Jenkins, clerk of the probate court of said county, the within named Isaac H. Hilliard, who acknowledged that he signed, sealed, and delivered the foregoing deed on the day and year, and for the purposes therein mentioned, as his act and deed.

Given under my hand and seal of office this second March, 1841.

[SEAL.] (Signed) H. M. JENKINS,
Cl'k.

I hereby, for value received, release and relinquish to Harry R. W. Hill and his heirs, all rights, title, claim, or interest which I have in and to the property, real and personal, mentioned in this deed.

Witness my hand and seal, this 21st day of March, 1841.

(Signed) SARAH C. W. FAUST. [SEAL.]

Filed for record 30th April, 1841. Recorded 3d May, 1841.

(Signed) GEO. CROCKET, *Cl'k.*

THE STATE OF MISSISSIPPI,
Yazoo County.

I, John M. Hollingsworth, clerk of the probate court of said county, do hereby certify that the above and foregoing four pages contain a true and perfect transcript of the deed in trust therein

mentioned, as fully as the same remains of record in my said office.

Witness my hand and the seal of said court, at Yazoo City, this 24th day of December, 1856.

(Signed) JNO. M. HOLLINGSWORTH, *Cl'k.*
By JNO. BRUMFIELD, *D. C.*

THE STATE OF MISSISSIPPI,
Yazoo County.

I, Robert B. Mayes, judge of the probate court of said county, certify that John M. Hollingsworth, whose name appears to the foregoing certificate, is now, and was at the date thereof, clerk of said court, duly elected, qualified, and commissioned, and that John Brumfield, whose name also appears to said certificate, is now, and was at the time of signing the same, a deputy clerk of said court, duly appointed and qualified, and that his said attestation is in due form of law.

Witness my hand and seal, this 24th day of December, 1856.

(Signed) R. B. MAYES, [SEAL.]
Probate Judge.

THE STATE OF MISSISSIPPI,
Yazoo County.

I, John M. Hollingsworth, clerk of the probate court of said county, certify that R. B. Mayes, whose name appears to the foregoing certificate, is now, and was at the time of signing the same, judge of the probate court of said county, duly elected, qualified, and commissioned, and that full faith and credit are due his acts in the premises.

Witness my hand and the seal of said court, at Yazoo City, this 24th day of December, 1856.

[SEAL.]

(Signed) JNO. M. HOLLINGSWORTH, *Clerk.*
By JNO. BRUMFIELD, *D. C.*

Document K, offered in evidence by Defendants.—Filed 3d December, 1857.

No. 10,628.

Whereas James B. White executed a deed of trust to Isaac H. Hilliard and William Ley, to secure certain debts therein named, and particularly to indemnify and save harmless William Hardeman against all loss or damage for and on account of his, said Hardeman's, liabilities as endorser and security for said White; said deed of trust is dated 19th November, 1839, and is recorded in Washington and Yazoo counties; and whereas the said William Hardeman was endorser or surety for said White on sundry bills of exchange, &c., due from said White to W. and J. Dick & Co., the precise amount due on said bills, and on other accounts for which

said Hardeman was liable to W. and J. Dick & Co., on the 1st day of March, 1851, fifteen thousand dollars, as per settlement made between said White and said W. and J. Dick & Co.:

And whereas the said trustee, Isaac Hilliard, at the request of said William Hardeman, advertised and sold all the property mentioned and contained in said deed of trust, on the 1st day of March, 1841, at which said sale Harry R. W. Hill became the purchaser of said property at and for the sum of fifteen thousand dollars, all of which more fully and at large appear in the deed executed by said trustee, Hilliard, to said Hill, dated 2d March, 1841, to which for greater certainty reference is thereto made:

And whereas said Hill is hereby willing to convey said property so purchased by him as aforesaid to trustees for the uses and trusts hereinafter specified; provided, however, that the said sum of $15,000, so bid by him as aforesaid, is paid, or so secured that it can certainly be realized in some reasonable time hereafter:

Therefore this indenture, made and entered this 10th day of March, A. D. 1841, between Harry R. W. Hill and M. E. Hill, his wife, of the first part, and James J. B. White and Isaac H. Hilliard of the second part, witnesseth, that the said purchaser of the first part, for and in consideration of the sum of one dollar to them in hand paid, the receipt of which they hereby acknowledge, and in consideration of the trusts hereinafter stated, have bargained, sold, transferred, and conveyed, and by these presents do bargain, sell, transfer, and convey, to the said James J. B. White and Isaac H. Hilliard, and their heirs forever, all the property, both real and personal, of every kind and description, purchased by the said Harry R. W. Hill as aforesaid at said trust sale, on the 1st day of March, 1841, which property is particularly described in the said deed of trust made by the said White to said Hilliard and Ley, dated 19th March, 1839; and also in the deed made by said Hilliard to said Hill, dated 2d March, 1841, to which said deeds for greater certainty in the description of said property reference is hereto had:

To have and to hold the aforesaid property to the said James J. B. White and Isaac M. Hilliard, and their heirs, upon trust, nevertheless, and upon the following uses and trusts and no other; that is to say, they, the said White and Hilliard, are to hold all of said property above conveyed in trust, that out of the crops of cotton which will hereafter annually be raised on the land herein conveyed, and which crops of cotton the said trustees are to raise by the labor and service of the slaves herein conveyed, they, the said trustees shall, out of the crop of each year, ship to and deliver annually to said Harry R. W. Hill, or W. & J. Dick & Co., at New Orleans, one hundred bales of good, fair, merchantable cotton, to be sold by said Hill or said W. & J. Dick & Co., at New Orleans,

the net proceeds of which shall be credited and applied to the extinguishment of said sum of $15,000 annually, and in the following manner:

The said sum of $15,000 shall bear interest from the 1st day of March, 1841, at the rate of seven per cent. per annum, which interest shall be calculated up to the time the net proceeds of the said one hundred bales of cotton shipped the first year as aforesaid are received by said Hill or by said W. & J. Dick & Co.; the net proceeds of said one hundred bales of cotton shall then be deducted from the said principal sum of $15,000, and the interest thereon as aforesaid, and the balance shall be the debt then due; interest at the same time shall be calculated on the balance up to the time the net proceeds or sales of the one hundred bales of cotton shipped the second year are received by said Hill or W. & J. Dick & Co., the net proceeds of which shall again be deducted and the balance shall be the debt then due, which balance shall bear interest at the same rate; and in this manner, from year to year, the proceeds of the cotton shipped each year shall be applied until the whole of said $15,000 and interest calculated as aforesaid is paid by the delivery of cotton as aforesaid, whatever of the crop of each year may remain in the hand of said trustees, and after shipping said one hundred bales as aforesaid, shall be applied, or such portion of it, not less than one hundred bales, shall be applied to the payment of a debt of about $25,000 due from said White to the Hagans, unless such debt is paid or extinguished by said Hagans enforcing their lien on the land sold by them to said White, and for which debt was contracted; provided, however, that if said trustees deem it necessary or proper, they may sell said land, or a portion of it, to extinguish said debts, or the debts due to said Hill, in which case the purchaser shall see to the proper application of the purchase-money. Said trustees are also empowered to exchange said property for other property when it will be beneficial to do so; or they may sell said property and re-invest it in other property when it is necessary or beneficial to the cestui que trust that it should be done, the property re-invested to be subjected to the trusts of this deed:

Provided also that the balance of the crops over and above what may be appropriated as above (after deducting the necessary expenses of the plantation,) shall be held for the sole, separate, and exclusive use of Mrs. Rebecca J. White, wife of said James J. B. White as aforesaid, and all and every the child or children of said James J. B. White, including his son Samuel Warren White, by his first wife, as well as all and every the child and children he now has, or at any time hereafter may have, by his present or any future wife, it being hereby intended that the said Rebecca J. White, and the said children of said James J. B. White now in issue, or which hereafter may be born, shall be equitable tenants

in common in fee of all said property; provided also that the rents, profits, crops, hire, &c., of said property shall, during the joint lives of said James J. B. White and his said wife Rebecca, be held for the sole, separate, and exclusive use of said Rebecca J., and she shall be authorized to receive the same absolutely, and be subject to the control and disposition in the same manner as if she were a feme sole; and in case of the death of any of said children without issue living, and before the age of twenty-one, the share of the one dying shall go to the surviving child or children; and in the event of all the children dying without issue living at the time of their death and before twenty-one, then the whole of the property or estate, or the shares which said children would be entitled to, shall survive to and vest in the said Rebecca J. White and her heirs, for her sole, separate, and exclusive : provided also that if the said Rebecca J. White should die without issue living at the time of her death, the property herein conveyed, or which she may be in any wise entitled to under this deed (except the crops, rents, hire, &c.,) shall vest in the right heirs of the said James J. B. White and their heirs forever.

It is understood that neither of said trustees are to be accountable for the acts of the others, and said Isaac H. Hilliard is in no wise to be accountable for anything, except for property or money he may receive and not account for.

And the said M. C. Hill, the wife of said Harry R. W. Hill, hereby releases all right of dower or interest which she has in the property herein conveyed.

And the said Harry R. W. Hill hereby only conveys such interest in said property as he derives by virtue of his purchase at said trust sale, and he in no wise warrants the title to any of said property.

In testimony whereof, the said Harry R. W. Hill and M. E. Hill, his wife, have hereto set their names and affixed their seals the day and year above written.

(Signed) H. R. W. HILL, [SEAL.]
(Signed) MARGARETTA E. HILL. [SEAL.]

STATE OF LOUISIANA,
Parish of Orleans.

Personally appeared before me, Charles Watts, judge of the commercial court of New Orleans, (which said court is a court of record of the State of Louisiana,) the above named Harry R. W. Hill, who acknowledged that he signed, sealed, and delivered the foregoing deed on the day and year therein mentioned as his act and deed for the purposes therein mentioned; also personally appeared before me M. E. Hill, wife of the said *Henry* R. W. Hill, and who being by me privately examined separate and apart from her said husband, acknowledged that she signed, sealed, and de-

livered the same deed as her voluntary act and deed, freely, without any fear, threat, or compulsion of her said husband.

Given under my hand and seal, this 19th day of March, 1841.

C. WATTS, [SEAL.]
Judge.

STATE OF LOUISIANA,
Parish of Orleans.

I, Edward Gardere, clerk of the said commercial court of New Orleans, do hereby certify that Charles Watts, whose certificate is above stated, was, at the time said certificate was made, and is yet judge of said court; that said certificate is signed by said judge in his own proper handwriting, and that the same is in due form of law.

Given under my hand—in testimony whereof, I have hereto affixed the seal of said court, being my seal of office, this [SEAL.] 19th day of March, 1841.

ED. GARDERE, *Clerk.*

Filed for record 30th April, 1841; recorded 1st May, 1841.

GEO. CROCKETT, *Cl'k.*

THE STATE OF MISSISSIPPI,
Yazoo County.

I, John M. Hollingsworth, clerk of the probate court in and for the county and State aforesaid, do hereby certify that the foregoing seven pages contain a true and correct copy of an instrument of writing which was filed in my office for record on the 30th of April, 1841, and which was duly recorded therein on the 1st day of May, 1841, on book of record of deeds, &c., L, pages 536 to 539, as fully and amply as the same now remains of record in my said office.

Witness my hand and seal of office, in Yazoo City, this [SEAL.] 24th day of December, A. D. 1856.

(Signed) JOHN M. HOLLINGSWORTH, *Clerk.*

THE STATE OF MISSISSIPPI,
Yazoo County.

I, Robert B. Mayes, judge of the probate court in and for the county and State aforesaid, do hereby certify that John M. Hollingsworth, whose name appears to the above certificate, is now, and was at the date thereof, clerk of said court, and that his said certificate and attestation are in due form of law.

Given under my hand and seal, this 24th day of December, A. D. 1856.

(Signed) R. B. MAYES, [SEAL.]
Probate Judge.

THE STATE OF MISSISSIPPI,
Yazoo County.

I, John M. Hollingsworth, clerk of the probate court in and for

the county and State aforesaid, do hereby certify that Hon. Robert B. Mayes, whose genuine signature appears to the above certificate, is now, and was at the date thereof, judge of said court, duly elected, commissioned, and qualified as such, and that full faith and credit are due and should be given to all his official acts as such in all courts of judicature, and thereout.

Witness my hand and seal of office, at Yazoo City, De-
[SEAL.] cember 24th, 1856.

(Signed) J. M. HOLLINGSWORTH, *Cl'k.*

Draft marked N, offered by Intervenors.—Filed 3d December, 1857.

YAZOO CITY, *September 4th*, 1856.

$9,999\frac{92}{100}$.

Four months after date pay P. O'Donnell, or order, nine thousand nine hundred and ninety-nine $\frac{92}{100}$ dollars, value received, and charge to account of your obed't serv't,

(Signed) JAMES J. B. WHITE, *Agent.*

To Messrs. OAKEY, HAWKINS & Co.,
New Orleans, La.

Oakey, Hawkins & Co.

(*Endorsed:*)

(Signed) P. O'DONNELL.
(Signed) A. M. HEINE.

Testimony.—Filed 4th December, 1857.

Lockwood Meggett, sworn for opponents: Was book-keeper of Oakey, Hawkins & Co., in November, 1856.

The draft N was accepted by Oakey, Hawkins & Co., September 11th, 1856; it was discounted on 12th September, 1856, and the proceeds were placed to the credit of P. O'Donnell, of Yazoo City. O'Donnell was indebted to Oakey, Hawkins & Co. at that time in the sum of $22,000. The proceeds of the draft were placed to the credit of his account. The proceeds of this draft were placed to the credit of O'Donnell's account.

(Bill of exchange N was the property of Mr. O'Donnell.)

Deponent does not know J. J. B. White at all; he only knows him as agent.

The account was entered in the books in the name of J. J. B. White, agent, upon the acceptance of the draft by Oakey, Hawkins & Co., which was the first transaction they had with J. J. B. White as agent.

The draft N was discounted in the market, and paid at maturity by Oakey & Hawkins. Oakey, Hawkins & Co. never had an account in their books with J. J. B. White. They had previous transactions with Rebecca J. White.

The proceeds of the one hundred and fifty-four bales of cotton in this case are $7,199 61, sold 4th December, 1856.

The cotton was sold for the account of J. J. B. White, agent; the cotton he speaks of is that mentioned in bill of lading marked M.

Draft N was in the form it is now when it was presented for acceptance. It was signed J. J. B. White, agent.

No cross-examination.

When the draft N matured, the proceeds were placed to the credit of J. J. B. White, agent, who at that time was, and is still, indebted to the house, the proceeds being insufficient. The balance due on this bill of exchange have not been paid.

R. W. Estlin, sworn for plaintiffs: Is a cotton factor; has been a member of Hill, McLean & Co.; retired from that firm in 1851, but is familiar with the business of the firm; that firm had business transactions with J. J. B. White; they were his factors.

The mark of the cotton from the plantation of Mr. White is "Tokepa." Thinks that as late as 1844 Mr. White did business with the firm of Hill, McLean & Co., when witness went there as book-keeper.

The draft D, shown witness, was given by White for a final settlement of his account with Hill, McLean & Co.

Plaintiffs offered said draft in evidence in connection with the testimony of Mr. Estlin.

Cross-examined: The names of the first houses of Mr. Hill were as follows: N. & J. Dick & Co.; Dick, McLean & Hill; Hill, McLean & Co., and H. R. W. Hill.

Evidence closed on both sides.

Draft marked D, offered by Pl'ff.—December 4th, 1857.

Exchange for $9,281 44. NEW ORLEANS, *February 17th*, 1854.

Twelve months after date of this first of exchange, second of same tenor and date unpaid, pay to the order of James Dick Hill ninety-two hundred eighty-one $\frac{44}{100}$ dollars, value received, and charge the same to account of,

(Signed) JAMES J. B. WHITE.

To Messrs. WRIGHT, WILLIAMS & Co., *New Orleans.*

Wright, Williams & Co.

(The endorsements are erased.)

Plea of Prescription of Def't.—Filed 4th December, 1857.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE.

The defendant, herein represented by the undersigned, counsel

appointed by the court for that purpose, avers that the Tokeba plantation and slaves has not been in his possession for more than ten years, but the same has for more than ten years been in possession of Mrs. Rebecca J. White and Mrs. Faust. Wherefore defendant, by the undersigned counsel, pleads that, if he ever had any title to said plantation and slaves, the same has been lost by the prescription of seven and ten years of the laws of Mississippi.

He therefore prays that this suit be dismissed, this court having no jurisdiction in this case.

(Signed) THOS. N. PEIRCE,
Attorney for Defendant, by appointment of the Court.

Plea of Prescription of Intervenors.—Filed 4th December, 1857.

WEIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

Fourth District Court of New Orleans.

Now come the intervenors, Mrs. White and Mrs. Faust, and Oakey, Hawkins & Co., and plead that the title of the said intervenors, Mrs. Faust and Mrs. White, has become good and valid, by the lapse of time, if in no other way, and that any right of action that the plaintiffs or other persons may have had, which right of action is expressly denied, is lost by prescription, or by the statute of limitation of the State of Mississippi, where the Tokepa plantation is situated, and the cotton in this case in dispute was produced.

Wherefore the said intervenors pray that the foregoing pleas of prescription be maintained; that the attachment of the plaintiffs be set aside, and the claim rejected, and for costs, &c., and for general relief, &c.

(Signed) MOTT & FRASER,
For Intervenors.

Order. (*Cause Submitted.*)

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE. } No. 10,628.

4TH DECEMBER, 1857.

This cause came on again to-day, pursuant to continuance, and after hearing further evidence and argument of counsel, the court took time to consider.

Reasons for Judgment.—Filed 11th December, 1857.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } No. 10,628.

Fourth District Court.

Plaintiff alleges that defendant is indebted to him in the sum of nine thousand five hundred and nine $\frac{32}{100}$ dollars, with eight per cent. interest from the 9th June, 1855, until paid, for money paid on his account, and at his request, as set forth in the account annexed to the petition, and prays for an attachment against defendant's property.

Under the attachment herein issued 154 bales of cotton were attached as belonging to defendant; the cotton was attached on the 18th of November, 1856, and on the 22d November, 1856, Oakey, Hawkins & Co., the consignees of the cotton, intervened and claimed the possession of the same, as that of Mrs. White and Mrs. Faust, and on the 27th November, 1856, the cotton was delivered to Oakey, Hawkins & Co., upon their executing bond in the sum of ten thousand dollars.

On the 27th November, Mrs. White and Mrs. Faust intervened and claimed the property attached.

A curator ad hoc was appointed to represent the absent defendant, and on the 20th of January, 1857, the said curator filed an answer.

On the 29th May, 1857, the case thus being at issue, the plaintiff filed an amended and supplemental petition, in which he states that since the institution of this suit, upon the 29th of December, 1856, at a circuit court in and for the fifth judicial district of the State of Mississippi, in and for the county of Yazoo, a judgment was rendered in favor of petitioner against the defendant White, for the same subject-matter stated in the original petition filed in this cause, as appears by the annexed transcript of the proceedings in this case filed for reference, and as part of said supplemental and amended petition, and prayed for judgment as in said original petition.

On June 11th, 1857, the defendant through his curator filed an exception to the amended petition, on the ground that the original cause of action, if any ever existed, had been merged in the judgment rendered in the State of Mississippi, that this court by the proceedings of plaintiffs had been divested of jurisdiction in the matters in controversy, and should be dismissed at plaintiffs' costs. He further plead res judicata.

On the 19th of November, 1857, the intervenors filed similar pleas.

Article 419, C. P., declares, "after issue joined, the plaintiff may, with the leave of the court, amend his original petition, provided the amendment does not alter the substance of his demand by making it different from the one originally brought."

The original debt sued on has been merged in the judgment rendered in the State of Mississippi, and as the judgment is entitled

to the same force and effect as if rendered in Louisiana, no action can be maintained on the original cause of action, viz: the open account. 2d N. S., 604.

The allegations in the supplemental petition alter the substance of the demand within the meaning of Article 419 C. P. See Dennistoun vs. Payne, 7 Ann., 334; Oakey vs. Murphy, 1 Ann., 372; 3 Ann., 375, 388.

The amendment cannot be allowed, and as the original cause of action has been destroyed by the plaintiffs' own showing, it follows that the exceptions must be sustained, and plaintiffs' petition be dismissed with costs, which is accordingly hereby ordered.

Judgment.

11TH DECEMBER, 1857.

For the reasons assigned in the written opinion of the court, this day delivered and on file, it is ordered, adjudged and decreed, that the exceptions filed by the defendant and the intervenors be sustained and that plaintiffs' petition be dismissed with costs.

Rendered December 11th, 1857. Signed December 17th, 1857.

(Signed) J. W. PRICE, *Judge.*

Plaintiffs' Bill of Exceptions.—Filed 24th December, 1857.

4th District Court of New Orleans.

WRIGHT, WILLIAMS & Co., in Liquidation, vs. JAMES J. B. WHITE. } No. 10,628.

Be it remembered, that on the trial of this cause, the counsel for Oakey, Hawkins & Co., Mrs. White and Mrs. Faust, being about to prove, and to offer testimony on their behalf, when the counsel for plaintiff objected to the same on the ground that the intervention of said Mrs. White and Mrs. Faust itself could not be sustained, the property having been bonded by the intervenors, Oakey, Hawkins & Co., and any testimony tending to establish said introduction would be inconsistent with said intervention of Oakey, Hawkins & Co., and that said inconsistency could not be allowed on said trial, both parties being represented by said counsel, the exception to said intervention not having been raised, but allowed by the parties and the court, to be considered together with the merits, to which objection of plaintiff the court overruled (at least for the present,) and admitted the same subject to a further inquiry as to its admissibility on the decision upon the merits.

To which ruling of the court, or the final admission of the same, the counsel for plaintiff excepted, and tendered this bill of exceptions to be signed, which is accordingly signed.

By the Court: It appearing that the intervention of Mrs. White and Faust was filed on the same day that the property was bonded,

and there being no evidence that the property was actually bonded prior to the filing of the intervention, evidence in the intervention was allowed.

(Signed) J. W. PRICE, *Judge.*

Plaintiffs' Bill of Exceptions.—Filed 24th December, 1857.

Fourth District Court of New Orleans.

WRIGHT, WILLIAMS & Co., in Liquidation,
vs.
J. J. B. WHITE.

Be it remembered, that on the trial of this cause, the defendant and the intervenors offered in evidence two documents, I, K, to which plaintiffs objected on the ground that the same are res inter alias actæ. But the court overruled the said objection and admitted the same as evidence. Whereupon, the counsel for plaintiffs excepted, on the ground that if the same were admitted, it should be restricted to rem ipsam, and tendered this bill of exceptions to be signed, which is accordingly signed.

(Signed) J. W. PRICE, *Judge.*

Order allowing Appeal.—24th December, 1857.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE.
No. 10,628.

On motion of Clarke & Bayne, esqs., of counsel for plaintiffs in this cause, and on suggesting to the court that said plaintiffs are advised and believe that there is error to their prejudice in the judgment of this honorable court rendered on the 11th instant, and that they are aggrieved thereby, it is ordered that an appeal be allowed to said plaintiffs to the honorable the supreme court of Louisiana, returnable in said court on the second Monday of February, 1858, upon giving bond in the sum of two hundred dollars, with good and solvent security, conditioned as the law directs; and that said defendant, J. J. B. White, his wife, Rebecca J. White, Mrs. C. W. Faust, and Oakey, Hawkins & Co., be made parties to said appeal.

Appeal Bond.—Filed 24th December, 1857.

Know all men by these presents, that we, Hamilton M. Wright and Richard T. Harrison, are held and firmly bound unto J. J. B. White, Oakey, Hawkins & Co., Rebecca J. White, and Mrs. S. C. W. Faust, their executors, administrators, and assigns, in the sum of two hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated in the city of New Orleans, on this twenty-fourth day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above bounden Hamilton M. Wright this day filed a petition of appeal from a final judgment rendered against him in the suit of Wright, Williams & Co. vs. J. J. B. White, in the fourth district court of New Orleans, on the eleventh day of December, eighteen hundred and fifty-seven:

Now the condition of the above obligation is such that the above bound Hamilton M. Wright shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the said Richard T. Harrison, his surety, shall be liable in his place.

(Signed) WRIGHT, ALLEN & CO.,
By CLARKE & BAYNE, *Att'ys.* [L. S.]
(Signed) R. T. HARRISON. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) T. L. BAYNE.

STATE OF LOUISIANA.

Fourth District Court of New Orleans.

I hereby certify that the above and foregoing ninety-five pages do contain a transcript of all the proceedings, as well as of all the documents filed and all the testimony adduced on the trial of the cause wherein Wright, Williams & Co., in liquidation, are plaintiffs, J. J. B. White is defendant, and Oakey, Hawkins & Co., Mrs. Rebecca J. White, and Mrs. S. C. W. Faust are intervenors, instituted in this court, and now on the records thereof under the number 10,628.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this first day of February, in the year of our Lord [SEAL.] one thousand eight hundred and fifty-eight, and in the eighty-second year of the independence of the United States of America.

(Signed) W. C. AULD, *Clerk.*
By M. H. FLANAGAN, *D'y Cl'k.*

(*Endorsement:*)

Fourth District Court of New Orleans. Wright, Williams & Co., in liquidation, app'ts, vs. J. J. B. White, app'ee. Oakey, Hawkins & Co., et als., intervenors, app'ees. Transcript for appeal. Clarke & Bayne for appellants. T. N. Pierce for def't and

app'ee. Mott and Fraser for intervenors and app'ees. 5,527. Supreme Court.
Filed February 5th, 1858.

F. A. FOYGNET,
D'y Clerk.

Proceedings in the Supreme Court.

Motion to appoint Attorney.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE. } S. C.

On motion of Mott & Fraser, for intervenors, and on suggesting that Tho's N. Pierce, esq., the attorney appointed to represent the absent defendant, J. J. B. White, has died since the appeal was taken in this case; and on suggesting further that the defendant never made an appearance in any way in the present proceeding, it is ordered that W. S. Stansbury be appointed attorney to represent the said defendant on the trial of the cause, in the place of said T. N. Pierce.

Service accepted Dec. 21, '58.
(Signed) WM. S. STANSBERRY.

(*Endorsement:*)

5,527. Wright, Williams & Co., in liquidation, vs. J. J. B. White. Motion to appoint attorney. Supreme Court.
Filed Dec'r 21st, 1858.
(Signed) EUGENE LASERE, *Cl'k.*

Entry on Minutes.

Supreme Court of the State of Louisiana.

The court met, Tuesday, December 21st, 1858.

Present, their Honors E. T. Merrick, chief justice; A. M. Buchanan, J. L. Cole, and Thomas T. Land, associate justices.

His Honor Cornelius Voorhis, associate justice, is absent.

WRIGHT, WILLIAMS & Co., in Liquidation, App'ts,
vs.
J. J. B. WHITE, App'ee, OAKEY, HAWKINS & Co. et al., Intervenors, App'ees. } 5,527.

On motion of Mott & Fraser, esqs., of counsel for intervenors herein, and on suggesting to the court that Thos. N. Pierce, esq., the attorney appointed to represent the absent defendant, J. J. B. White, has died since the appeal was taken in this case, and on suggesting further that the defendant never made an appearance in any way in the present proceeding, it is ordered by the court that W. S. Stansburry esq., be appointed attorney to represent

the said defendant on the trial of this cause, in the place of said T. N. Pierce, deceased.

Continuance.

Supreme Court of the State of Louisiana.

The court met, Wednesday, December 22d, 1858.

Present, their Honors E. T. Merrick, chief justice; A. M. Buchanan, J. L. Cole, and Thomas T. Land, associate justices.

His Honor Cornelius Voorhies, associate justice, is absent.

WRIGHT, WILLIAMS & Co., in Liquidation, App'ts,
vs.
J. J. B. WHITE, App'ee, OAKEY, HAWKINS & Co., Intervenors, App'ees. } 5,527.

It is ordered that this case be continued by preference.

Continuance.

Supreme Court of the State of Louisiana.

The court met, Wednesday, January 19th, 1859. Present, their Honors E. T. Merrick, chief justice; A. M. Buchanan, J. L. Cole, and Thomas T. Land, associate justices. His Honor Cornelius Voorhies, associate justice, is absent.

WRIGHT, WILLIAMS & Co., in Liquidation, App'ts,
vs.
J. J. B. WHITE, App'ee, OAKEY, HAWKINS & Co., Intervenors, App'ees. } 5,527.

It is ordered that this case be continued by preference.

Entry on Minutes.

Supreme Court of the State of Louisiana.

The court met, Wednesday, April 6th, 1859. Present, their Honors E. T. Merrick, chief justice; A. M. Buchanan and Thomas T. Land, associate justices. Their Honors Cornelius Voorhies and J. L. Cole, associate justices, are absent.

WRIGHT, WILLIAMS & Co., in Liquidation, App'ts,
vs.
J. J. B. WHITE, App'ee, OAKEY, HAWKINS, & Co., Intervenors, App'ees. } 5,527.

This case was this day argued by T. A. Clarke, esq., of counsel for plaintiffs, W. S. Stansbury, esq., of counsel for defendant, and Robert Mott, esq., of counsel for intervenors.

Opinion and Decree.

Supreme Court of the State of Louisiana.

The court met, Monday, April 25th, 1859. Present, their

Honors E. T. Meraick, chief justice; A. M. Buchanan, J. L. Cole, and Thomas T. Land, associate justices. His Honor Cornelius Voorhies, associate justice, is absent.

WRIGHT, WILLIAMS & Co., in Liquidation, App'ts,
vs.
J. J. B. WHITE, App'ee, OAKEY, HAWKINS & Co., et als., Intervenors, App'ees. } 5,527.

Appeal from the Fourth District Court of New Orleans.

Mr. Chief Justice Merrick dissenting.

In this cause Mr. Justice Land this day delivered the opinion of the court in writing, in the words and figures following:

This is an attachment suit for the recovery of nine thousand five hundred and nine dollars and thirty-two cents, with eight per cent. per annum interest, from the 9th day of June, 1855, for money advanced in payment of defendant's draft, given on a final settlement of his account with Hill, McLean & Co., his former factors.

One hundred and fifty-four bales of cotton were attached, as the property of the defendant, on board the steamboat Sallie Robinson, at the port of New Orleans, consigned in the name of P. O'Donnell to Oakey, Hawkins & Co.

The consignees, Oakey, Hawkins & Co., intervened in the suit, and claimed the cotton as the property of O'Donnell.

On the 25th of November, 1856, Oakey, Hawkins & Co. obtained an order of court permitting them to bond the cotton, and accordingly, on the 27th day of same month, gave bond and security, as *as* required by order of court.

On the same day, to wit, the 27th of November, 1856, Rebecca J. White, the wife of the defendant, and Mrs. S. C. W. Faust, filed their petition of intervention in this suit, and claimed the cotton attached as their joint, undivided, separate, property.

To this petition of intervention, the plaintiff pleaded in his answer thereto the following peremptory exception, "that the cotton claimed had been delivered on bond anterior to the filing of the intervention to Oakey, Hawkins & Co., and is not now in court," and prayed that the intervention be dismissed.

On the 29th of May, 1857, the plaintiff filed a supplementary petition, in which he alleged that, since the institution of this suit he had obtained a judgment in the circuit court of Yazoo county, in the State of Mississippi, against the defendant for the same subject-matters stated in the original petition filed in this cause, and prayed for judgment as in said original petition, and that defendant be cited to answer thereto.

After the filing of the supplemental petition, the attorney appointed to represent the defendant filed the following exception:

"That the original cause of action, if any existed, has been merged in the judgment rendered in the State of Mississippi, and the proceedings therein had, as shown by the supplemental petition and documents annexed. That this court, by the said proceedings of plaintiffs, has been divested of jurisdiction in the matters in controversy, and this suit should be dismissed at plaintiffs' costs; defendant further pleads res judicata."

The intervenors also filed an exception to the supplemental petition, as follows: "That the same is a change of the original cause of action, and is contrary to law; and further pleaded the exception of res judicata."

First. The intervention of Oakey, Hawkins & Co. is unsustained by the evidence. It does not appear that O'Donnell was the owner of the cotton attached, or that it was even shipped with his knowledge or consent. Nor does it appear that he or the consignees were in possession of the bill of lading prior to the attachment of the cotton by the plaintiff. This intervention, therefore, must be dismissed.

Second. The peremptory exception filed by the plaintiff should have been sustained; the bond given by Oakey, Hawkins & Co. was only a substitute for the property attached with regard to the plaintiffs, and not as to the intervenors or third parties claiming title thereto.

The intervenors cannot avail themselves of the bond, and their remedy was against the property itself, in the hands of the party having possession of it. Dow vs. Kershaw, 18 La., 57; Beal vs. Alexander, 1 Rob., 277; 7 Rob., 349.

Third. The exception filed by the attorney appointed to represent the defendant should have been overruled. The plaintiff had the right under the law of Louisiana to sue the defendant in the courts of this State, and also in the courts of Mississippi, at the same time, and for the same cause of action. This right necessarily carries with it the accessory right to prosecute the suits in the courts of the two different States to final judgments on the merits. This right is remedial, and is intended to secure to the creditor all possible means for the collection of his debt in different jurisdictions. If the exception filed on behalf of defendant were sufficient in law to dismiss the plaintiffs' action, the right to institute separate actions in different States for the same debt would be nugatory, for so soon as a judgment should be obtained in one State, it could be made the means of dismissing the suit in the other, and thereby deprive the creditor of the fruits of his diligence in the undecided suit.

Conceding that the account sued on was merged in the Mississippi judgment, the debt was not thereby extinguished, but established to be due and owing from the defendant to the plaintiff. This judgment in Louisiana is only evidence of the existence of

the debt for the recovery of which this suit was instituted, the affidavit was made, the attachment bond was given, and the writ of attachment issued, and there is no legal reason why this judgment should not be substituted by way of amendment, as the cause of action, in place of the account, for the purpose of maintaining the attachment.

The fact that the judgment is for a greater amount than claimed and sworn to by the plaintiff is immaterial, for the reason that the attachment is only valid as against the property for the amount sworn to, whatever may be the amount claimed in the petition.

The supplemental petition did not change the substance of the demand. The prayer of the original petition is that the attachment be maintained, and that the defendant be condemned to pay the sum of $\$9{,}509\frac{32}{100}$ and interest, with privilege upon the property attached, and the prayer of the supplemental petition is the same.

It is therefore ordered, adjudged and decreed, that the interventions of Oakey, Hawkins & Co., and of Mrs. White and Mrs. Faust, be dismissed at their costs. And it is further ordered, adjudged and decreed, that the judgment be avoided and reversed; and proceeding to render such judgment as should have been rendered by the lower court, it is ordered, adjudged and decreed, that the plaintiff do have and recover of the defendant the sum of nine thousand five hundred and nine dollars and thirty-two cents, with five per cent. per annum interest thereon, from the ninth day of June, eighteen hundred and fifty-five, and costs of the lower court, and that plaintiffs' privilege upon the property attached be recognised and enforced. It is further ordered and decreed, that the defendant pay one third of the costs of this appeal; that Oakey, Hawkins & Co. pay one third, and Mrs. White and Mrs. Faust the remaining third.

Dissenting Opinion of Mr. Chief Justice Merrick.

I am unable to concur in the opinion of the court in this case.

The first section of the fourth article of the Constitution of the United States requires that full faith and credit shall be given in each State to the judicial proceedings of every other State, and conferred upon Congress power to prescribe the mode of proof, and declare the effect of such proceedings.

In pursuance of such authority, Congress has declared that judicial proceedings properly authenticated shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from whence the said records are taken. 1 Stat. at Large, 122.

To ascertain, therefore, the effect of the judgment of the Mississippi court, we must look to the laws of the State; and in the ab-

sence of proof on that subject, we must presume that judgments rendered in the courts of Mississippi produce the same effect as our own. If we refer to the common law authorities, we find that the account sued on had become merged in the judgment. It had no longer any existence as an account, and had become a debt of record, which did not admit the same pleas. See Mills vs. Dwyee, 7 Cranch, 483; Hampton vs. McConnell, 3 Wheaton, 234; 2 N. S., 610.

The doctrine of merger of the common law, both in reference to judgments and obligations, is almost precisely the same as the novation of the civil law. 12 Ann., 565. If we look to our own law to ascertain the effect of the Mississippi judgment in that State, we find it novated the account. No suit could be maintained upon it, for it had become extinguished by the novation. Oakey vs. Murphy, 1 Ann., 372; Dennistoun vs. Payne, 7 Ann., 334.

But it is supposed that because the pendency of a suit for the same cause of action between the same parties in another State cannot be pleaded as a dilatory exception, that therefore the judgment first rendered cannot be pleaded as res judicata to the other. But we have, quite recently, in the case of Scott & Co. vs. Bogart & Co., determined that such plea could and ought to be made, and that the judgment last rendered, where the plea was not interposed, would be conclusive. If the first judgment could not be pleaded as res judicata, it might happen that the two judgments should be the opposite of each other. The mere pendency of two suits in two different jurisdictions for the same cause of action, does not necessarily imply that judgment may be rendered in both; but, on the contrary, it only gives the plaintiff the right to execute the first judgment which he shall obtain, and the other suit must be dismissed, for the original cause of action has been novated; for the case then comes within art. 94 of the Code of Practice, which provides that, "If the defendant, instead of claiming to be dismissed, answer to the two actions in two separate courts, the first judgment rendered by either of them shall be valid, and executory against the party cast in the action. All proceedings shall be stayed in the other court, and the plaintiff dismissed, after paying the costs."

So, too, where the suits are pending in different States, the plaintiff may press either to judgment; but then the Constitution and laws of the United States step in; and if the original cause of action be merged or novated in or by the judgment of the State where rendered, it produces the same effect in every other State of this Union; and as a consequence may be pleaded in bar to any suit commenced, or thereafter to be commenced, on the original cause of action thus extinguished.

But it is supposed that because plaintiff had a cause of action here when he commenced his attachment, the Mississippi judgment only confirmed that cause of action. But this is inconsistent with the doctrine of merger and novation. Judgments do not confirm the original causes of action, but extinguish them, and substitute in the place of them the highest evidence of the right of the party, viz., a judgment importing absolute verity. It is precisely as though the parties had expressly novated the original cause of action by a new contract of a higher character. See McKee vs. Carnes, 2 N. S., 600, 604. The cases in 5 L. R., 424, and 1 Ann., 382, are cited to show that this court has taken care to guard the defendant against the effect of a judgment which might be rendered in a sister State in a suit then pending. These decisions do not disprove the doctrine of res judicata resulting from the Constitution and act of Congress, but prove that, in addition, it was necessary that the party should be protected against the rendition of two judgments so nearly at the same time that one could not be pleaded in bar of the other.

The next question is, could the plaintiff amend by substituting his new cause of action in the place of the old one? The proceeding by attachment is stricti juris, and amendments cannot be allowed in an attachment suit, which could not be allowed in an ordinary suit. If the judgment of the Mississippi court was a plea in bar to plaintiff's original action, as we think has been demonstrated, then the following reasoning of Judge Porter in the case cited is conclusive. He says, in a case very similar to this of a replication setting up the judgment pleaded by the defendant, and demanding judgment on it, viz: "How this can be granted to them we cannot perceive. If the plea be good as a bar to their action, then there is nothing more before the court on which to act. It would certainly be a magical kind of proceeding in the administration of justice to change in an instant, and in the same suit, that which, in the hands of the defendant, was to him a shield, into a weapon of destruction in those of his adversary." 2 N. S., 603.

In the case of Oakey vs. Murphy, 1 Ann., 372, the court refused to allow the plaintiff to amend, by setting up the judgment.

The same point was ruled in the case of Dennistoun vs. Payne, 7 Ann., 334. See 5 N. S., 70; 8 N. S., 438; C. P., 419.

I do not see how plaintiff can be permitted to amend in the present case, without overthrowing the well established principle of law.

If they suffer inconvenience from the application of the rules of law to their case, it would teach creditors that it is not always safe to pursue the debtor with a multiplicity of suits; and if it be done, that it will be well to consider in which one judgment ought first to be taken.

Whether the case would be different where all the suits were attachment suits, and operated only in rem and not in personam, it is not necessary to consider.

I think the judgment ought to be affirmed.

Petition for rehearing on behalf of Intervenors and Defendant.

In the Supreme Court of Louisiana.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE.

We propose to say but a few words on the question of the intervention of Oakey, Hawkins & Co., to those of Mrs. White and Mrs. Faust.

Oakey, Hawkins & Co. were the consignees of the cotton; they had, therefore, a right to sue, whether charged with the real ownership or not. Lawrence vs. Minturn, 17 Howard, U. S. S. C., 106.

Indeed the principle is too well settled to admit of question; their action is for the benefit of the real owner, who may, at any time, come in and claim the benefit of their suit. The intervention of Mrs. White and Mrs. Faust was, therefore, but a corolary of the claim of Oakey, Hawkins & Co.; as they do not dispute their advance to their agent, J. J. B. White, there is no conflict between the several intervenors.

The petition and argument filed by our colleagues, Messrs. Kennedy & Miles, is so full that we will not further occupy the attention of the court, further than by calling attention to the bond given by Oakey, Hawkins & Co., the condition of which is not to pay the judgment of the court, but to account for the proceeds of the cotton attached, and therefore the interventions of Mrs. White and Mrs. Faust were not, in our opinion, filed too late, for the property was still subject to the jurisdiction of the court.

Respectfully submitted.

(Signed) MOTT & FRASER,
Of Counsel.

(*Endorsement:*)

5,527. Supreme Court. Wright, Williams & Co. vs. J. J. B. White. Petition for rehearing on part of intervenors.
Filed May 9th, 1859.

(Signed) F. A. FOYGNET,
D'y Clerk.

Petition for rehearing on behalf of Intervenors and Defendant.

Supreme Court of Louisiana.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE, OAKEY, HAWKINS & Co. et als., Intervenors.

The defendant and intervenors pray for a rehearing on the following suggestions, which are most respectfully submitted for the consideration of the court:

I. The reasons for overruling the exception of res judicata are principally—

1st. The account sued on here was not merged in the Mississippi judgment.

2d. If the account was merged, the debt was not thereby extinguished, but established to be due and owing.

3d. The judgment in Mississippi is only evidence of the existence of the debt for the recovery of which this suit was instituted.

4th. There is no reason why the judgment should not be substituted by way of amendment, as the cause of action, in place of the account, for the purpose of maintaining the attachment.

5th. The right to sue in both States, carried with it the right to recover judgment in both States.

Upon the first ground, we submit that the Mississippi judgment must be construed by the law of Mississippi, from which it derives its being, to which the plaintiff voluntarily submitted himself, and on which he is now pressing that judgment as conclusive in this court, under the Constitution and law of the United States.

Then, does the law of Mississippi merge the account in the judgment?

The principle of the common law is well settled; the debt is merged, that is, extinguished, in the judgment obtained on it; in the nervous language of Bacon's Abridgment, it is "drowned" in the judgment. 3 Bacon's Abridgment, title Extinguishment, letter D, page 106; 1 Dennis's Rep., 407, 410; 1 Mason, 482, 505.

The court will, of course, notice judicially that the common law prevails in Mississippi; besides, the principle has been expressly recognised by her tribunals. It is sufficient to cite Myers and al. vs. Oglesby and al., 6 Howard's Miss. R., 46, 50.

A judgment is res judicata in favor of the party cast, as well as against him; its effect cannot be divided for or against either party; it must stand as a whole or go forth for nothing.

A contract made in Mississippi between the plaintiff and the defendant, at the time this judgment was recovered, which should have novated the account here sued on—in other words, merged it in a new obligation—could have been set up in this cause as a ground of dismissal; this is unquestionable.

It seems paradoxical to say that no such effect shall be allowed to a Mississippi judgment, when the law of Mississippi gives to decrees of its tribunals, acting rightfully on the parties and the subject-matter of suits, a force and effect even greater than it does to the most formal contracts. But, "judicio quoque contrahimus."

On the other hand, what would follow from the position that the account was not merged in the judgment? Surely this: that if White had been sued originally on the judgment, he might have replied, "The judgment is based on an alleged account; that account is not merged in the judgment; there are such and such errors in it to my prejudice."

In such a case, on the hypothesis that the account was not merged, the judgment could not be relied on as a cause of action, for there cannot be two causes of action and only one debt; it could be used only as evidence. If admitted as conclusive evidence, it could only be on the ground that it was res judicata, a bar to all further inquiry, a closing of all previous issues; in a word, a merger, which would, of course, contradict the theory set out with. If admitted, on the other hand, merely as prima facie evidence, liable to be rebutted, the court would be brought face to face with the Constitution and laws of the United States. Thus the position we are struggling against would lead, logically, to difficulties which no logic could remove.

But plaintiff's counsel in their brief, (p. 3 and 4,) distinctly admit the authority of the many cases, which show that after judgment obtained in a sister State, no suit can be maintained here on the original cause of action. They themselves give the true reason for this; it is, that in such cases the original cause of action no longer exists; in other words, is merged in the judgment. But they assert a distinction between such cases and cases in which judgment has not been rendered in the sister State when suit is instituted here. By this admission and this alleged distinction, which again implies the admission, they surrender their case, for if there is merger in one class of cases, there is necessarily merger in the other, because, on principle, the effect of a judgment, rightfully rendered, must depend on its own nature, its own inherent power under the law to work out particular results, and not upon the time when it was rendered—a thing purely accidental, and not altogether intrinsic to its nature. In this matter we believe counsel on the other side have been misled by principles correct in themselves, but inapplicable to cases like this. It is perfectly true, that the mere pendency of a suit in one State will not ground a plea in abatement to a suit in a sister State. But why is this? Simply because all the States being equally sovereign and independent, the tribunals of no one State will abdicate their jurisdiction over persons and things within the limits of the State, because the tribunals of another State may have acquired, at an earlier

date, a similar jurisdiction in the same case upon a similar ground. There being no common law to control the several States, no State through its tribunals will do an act which would involve an abandonment of its sovereignty in favor of another State, no wise its superior. But this, clearly, has nothing to do with the merits of any case over which two or more States may thus retain a jurisdiction at one and the same time. It is a question of jurisdiction, and of jurisdiction alone, and is so treated by the Supreme Court. See 6 N. S., 517; 7 L. R., 417.

The question varies essentially, when a judgment obtained in another State, after suit brought here, is set up here as res judicata. It is no longer a question of jurisdiction, involving State sovereignty and State pride, but a question looking to the merits proper of the case, exclusively in its relation to the parties litigant. The reasoning which repels the plea in abatement does not meet the plea of res judicata, for they run in different circles. The plea of res judicata here is the same that it would be under similar circumstances in a Mississippi court. It is the same that it would be in a court in New Orleans upon a judgment obtained under similar circumstances in the parish of Ascension, and to refuse it the same effect that it would have if founded on a judgment rendered in any court in Louisiana, seems to be establishing a wide difference between judgments which, for all the purposes of this case, the Constitution and laws of the United States put on a footing of perfect equality.

The cases in 5 La., 424, and 1 Ann., 382, cited at page 4 of plaintiff's brief, are not to the purpose. In the first case the plaintiff had not yet recovered judgment in this State or in Kentucky, and the Louisiana court could not guess in which State judgment would be rendered first; it was highly proper to protect defendant. In the second case, the defendant here was only garnishee in Alabama; his creditor was plaintiff; his creditor's creditor plaintiff in Alabama. A recovery here would not have protected the garnishee in Alabama. Of course it was doubly proper to protect him. In both cases there had been a seizure of property in the other States, and they turned upon principles peculiar to cases of that sort. In arguing upon the first reason given by the court for overruling the plea of res judicata, most of the other reasons have been necessarily considered. It may not, however, be amiss to take them up briefly in the order in which they are above presented.

The second reason is, substantially, that if the account was merged, the debt was not thereby extinguished, but established to be due. The court cannot, of course, mean that if the account was merged, the debt, as an account, was not merged. It must mean, that notwithstanding the merger, a liability remained. The appellees never pretended otherwise. Their argument, founded on

the doctrine of merger, is, that the defendant's liability passed into the judgment, leaving the account defunct. Here, then, the question already discussed recurs: Was there a merger, or not?

The third reason is, that the judgment in Mississippi is only evidence of debt, for the recovery of which this suit was instituted. If the account is merged in the judgment, the judgment is something more than evidence; it is a cause of action; of course it is evidence of itself as a cause of action. In relation to the account, it (the judgment) is only evidence that the account once existed. We have already endeavored to show what difficulties flow from the position that the account was not merged. The question of merger seems to be closely connected with every reason of the court, so far considered.

The fourth reason is, that there is no reason why the judgment should not be substituted, by way of amendment, as the cause of action, in place of the account, for the purpose of maintaining the attachment.

We venture to suggest a reason, which appears to us not devoid of force. The account, on our hypothesis, was extinguished, as a cause of action, the very instant the Mississippi judgment became final. When the supplemental petition was filed, setting up the judgment, there was nothing in existence of which the judgment could take the place. The account being dead, the attachment and all the proceedings under it, eo instanti, lost their vitality, unless they could subsist without a debt, in court, to be secured by them. They could not be revived by any subsequent act of the plaintiffs. Besides, an amendment should have in court something that is amended. An amendment which excludes everything but itself is an amendment only in name; it is, in truth, the substitution of a new cause of action for the old one. So that, even here, the old question thrusts itself on us again, "Merger or no merger?"

The fifth reason is, that the right to sue in both States carries with it the right to proceed to judgment in both States. This is so, undoubtedly, if the judgment first obtained does not extinguish the original cause of action, but it would seem not otherwise. So that this question of merger is the one which runs through the case from beginning to end, is the test of all the other points made, and is not tested by them. The remaining suggestions of the court are covered by the same reasoning. 17 L. Rep., 452.

II. The intervention of Mrs. White and Mrs. Faust was dismissed upon the ground that "the bond given by Oakey, Hawkins & Co. was only a substitute for the property attached with regard to the plaintiffs, and not as to the intervenors, or third parties claiming title thereto. The intervenors cannot avail themselves of the bond, and their remedy was against the property itself, in the hands of the party having possession of it."

The court cite 18 L. R., 57; 1 Rob., 277; 7 Rob., 349. In the first of these cases the defendant himself had bonded the cotton attached under article 259 of the Code of Practice, and the attachment was dissolved by force of that article. Such was the construction of the court. The court base their conclusion upon the ground that the bond was conditioned for the payment of any judgment that might be rendered against him, and not to hold the cotton subject to the order of the court; that defendant's obligation could not therefore be discharged by the surrender of the property attached; and that the plaintiffs could not, upon obtaining judgment, exercise any recourse upon it. The ruling idea of the court seems to have been that the intervention of the defendant to bond, under article 259 of the Code of Practice, converted the suit from one in rem to one in personam. The idea is reproduced in Rathbone & Co. vs. Ship London and owners, viz., that from the moment the defendant gives bond the attachment is set aside, and he becomes personally liable to a judgment, judicatum solvis. It is pressed to its utmost limit in 7 Ann., 668, Kendall vs. Brown. In that case an agent of the defendant bonded the property for him. The proceedings in the attachment having been regular, the suit was considered to be converted from one in rem to one in personam by the bonding, even by an agent, to such an extent as to render the appointment of an attorney to represent the defendant unnecessary, and affirmed the confirmation of a judgment by default against him.

In this case the condition of the bond given by Oakey, Hawkins & Co. is not to pay any judgment against them, or against anybody else. It is simply "to produce the property to meet the judgment of the court, or account for the proceeds thereof whenever required, should judgment go against them." Now no judgment could go against them, except the one which this court has rendered—that is, dismissing their intervention. The defendant, it must be borne in mind, is no party or in anywise privy to that bond. If the bond is a substitute for the property as to the plaintiff, and not as to the intervenors, Mrs. White and Mrs. Faust, because they are neither parties nor privies to it, for the same reason, it must also be true that it is not a substitute for the property as to the defendant. Then, from the moment the property attached was released from the attachment by the bonding, the defendant was no longer in court, and no judgment could be rendered against him, either in rem or personam. Not in rem, because the property was gone; not in personam, because he was not cited, and he is no party to the bonding, and the whole case must go by the board on a non-suit.

If, on the other hand, the attachment was not dissolved by the bonding by Oakey, Hawkins & Co., and if for that reason the defendant is still in court by the presence of his property, there seems

to be no reason why the intervention of Mrs. White and Mrs. Faust should not have been examined on the merits. There are additional reasons for this, which we believe will commend themselves to the court, viz: 1st. That their intervention was filed in all probability before the bonding; see pp. 4 and 5 of appellant's brief, where it is said that the cotton was delivered to Oakey, Hawkins & Co., notwithstanding that intervention; and the bond being given to the sheriff, without naming any of the parties, there can be no difficulty in giving it effect in favor of any party, really interested. 2d. That the remedy indicated by the court—that is, a suit against the parties in possession of the property bonded—would have been attended, probably, with considerable difficulty. What would Oakey, Hawkins & Co. have answered to such a suit? Assuredly this: We are under bonds to account to a court of justice for this cotton, or its proceeds, or pay a heavy penalty. One court will not compel us to violate our obligation to another. If this defence should have failed, what defence would those gentlemen set up under these circumstances to an action on the bond? Surely this: We have been disabled by the act of the law from producing the cotton or its proceeds. The law, therefore, must hold us excused. This defence would be supported by article 2116 of the Civil Code. See also Freeman, Mississippi Cha. Rep., 381; 3 Mun. Va. Rep., 417; Powell on Contracts, 268, 228.

Oakey, Hawkins & Co. could not be condemned in both suits. They could fail in the suit to be brought by Mrs. White and Mrs. Faust only on the ground, that by the effect of the bonding the property bonded passed from the control of the court, which, as we have already said, would put the defendant out of court, and with him the case in all its branches. The difference between this case and the case of a defendant who bonds is essential, resulting from the change of parties, and the variation in the condition of the bonds.

III. If this court should persist in its opinion upon the question of res judicata, and yet consider that Mrs. White and Mrs. Faust are entitled to a decision on the merits of their intervention, we respectfully ask of the court, if, after overruling that plea, the whole cause should not have been remanded to the lower court for a decision on all its branches? The lower court decided nothing but the exception. Can this court, without exercising original jurisdiction, decide upon the merits, when they were not and could not have been even considered by the lower court? The evidence on the merits was placed before that court, it is true; but we understand that when this is done, there being a peremptory exception to be decided, the evidence on the merits is submitted, as it were, subsidiarily—that is, to be used only if the exception should be overruled. It is evident, that in cases turning on facts, the opinion of the judge a quo is often of use to this court. We make

the point with diffidence, because the court has pursued a different course.

(Signed) KENNEDY & MILES,
Att'ys for Intervenors.

I join with the counsel for the intervenors in asking a rehearing in this cause, and adopt their reasoning in regard to the effect of the judgment rendered in Mississippi.

New Orleans, May 7th, 1859.

(Signed) WM. S. STANSBURRY,
Appointed to represent the absent Defendant.

(*Endorsement:*)

5,527. Wright, Williams & Co. vs. J. J. B. White; Oakey, Hawkins & Co. et al., intervenors. Petition for rehearing.

Filed May 9th, 1859.

(Signed) F. A. FOYGNET,
D'y Cl'k.

Order refusing Rehearing.

Supreme Court of the State of Louisiana.

The court met, Monday, May 30th, 1859. Present, their Honors E. T. Merrick, chief justice; A. M. Buchanan, J. L. Cole, Thos. T. Land, and Albert Voorhies, associate justices.

WRIGHT, WILLIAMS & Co., in Liquidation, App'ts,
vs.
J. J. B. WHITE et als., App'ees. } 5,527.

It is ordered that the rehearing prayed for in this case be refused.

Petition of Defend't for a Writ of Error.

In the Supreme Court of Louisiana.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE, OAKEY, HAWKINS & Co. et als., Intervenors. } No. 5,527.

To the Honorable the Chief Justice of the Supreme Court of the State of Louisiana:

The petition of J. J. B. White respectfully represents, that in the above entitled cause, wherein your petitioner was defendant, a final judgment was rendered against petitioner on the day of , 1859, and signed on the day of , 1859; that he is informed and believes that he has a right to have said judgment revised and examined by the Supreme Court of the United States, on a writ of error, and that he is now desirous of obtaining a writ of error from the said judgment.

Wherefore your petitioner prays that a writ of error be allowed him in the said case, returnable to the next term of the Supreme Court, on his furnishing bond, conditioned according to law.

(Signed) WM. S. STANSBURRY,
Curator ad hoc to the absent defendant, J. J. B. White.

Bond annexed.

Know all men by these presents, that we, J. J. B. White, by Wm. S. Stansburry, as curator ad hoc, as principal, and J. Virgil Richards, as security, are held and firmly bound unto Hamilton M. Wright, Mrs. S. C. Faust, and Mrs. R. J. White, and Wright, Williams & Co., in the sum of five hundred dollars, to be paid to the said Wright, Williams & Co., their heirs, executors, administrators, or assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this fifteenth day of June, A. D. 1859.

Whereas the above bounden J. J. B. White has this day presented a petition to the honorable the supreme court of Louisiana, praying for a writ of error in the case entitled Wright, Williams & Co. vs. J. J. B. White, Oakey, Hawkins & Co. et al., intervenors, No. 5,527 of the docket of said court, from a final decree rendered on the fifth day of April, 1859:

Now, therefore, the condition of the above obligation is such, that if the above named appellant shall prosecute the said writ of error, and well and truly pay all damages and costs as may be recovered against him in case it should be decided that the said writ of error was wrongfully obtained, and the judgment heretofore rendered against him should be affirmed, then to be void; otherwise to remain in full force and virtue.

(Signed) J. J. B. WHITE, [SEAL.]
By WM. S. STANSBURRY, *Curator ad hoc.*
J. VIRGIL RICHARDS. [SEAL.]

Attest: J. G. MURTAGH.

Approved by—
(Signed) E. T. MERRICK,
Chief Justice.

(*Endorsement:*)

No. 5,527. Supreme Court. Wright, Williams & Co., in liquidation, app'ts, vs. J. J. B. White, app'ee; Oakey, Hawkins & Co. et al., intervenors, app'ees. Petition and bond for a writ of error.

Filed June 15th, 1859.

(Signed) EUGENE LASERE, *Cl'k.*

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court, before you, or one of you, between Hamilton M. Wright, sole assignee of the rights and interests of the late commercial firm of Wright, Williams & Co., and J. J. B. White, as defendant, and Oakey, Hawkins & Co., composed of Gilbert S. Hawkins and Peter J. Cockburn, as copartners, Mrs. Rebecca White and Mrs. S. C. Faust, as intervenors, a manifest error has happened, to the great damage of the said J. J. B. White, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 14th of June, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) J. W. GURLEY, [L. S.]
Clerk of the United States Circuit Court for Eastern District of Louisiana.

Allowed by—
(Signed) E. T. MERRICK.

(*Endorsement:*)

Supreme Court of the State of Louisiana. No. 5,527. Wright, Williams & Co., app'ts, vs. J. J. B. White, app'ee; Oakey, Hawkins & Co., and Mrs. White and Mrs. Faust, intervenors, app'ees. Writ of error.

Copy of writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance the statute in such cases made and provided, this fifteenth day of June, 1859.

(Signed) W. S. STANSBURRY,
Attorney appointed by the Court to represent Plaintiff in Error.

No. 5,527. Supreme Court of the State of La.
Filed June 15th, 1859.

EUGENE LASERE, *Cl'k.*

Petition of Intervenors for a Writ of Error.

WRIGHT, WILLIAMS & Co.
vs.
J. J. B. WHITE, OAKEY, HAWKINS & Co. et als., Intervenors. } No. 5,527.

In the Supreme Court of La.

To the Honorable the Chief Justice of the Supreme Court of the State of Louisiana:

The petition of Oakey, Hawkins & Co., Mrs. S. C. W. Faust, and Mrs. R. J. White, aided and assisted herein by her husband, J. J. B. White, respectfully represents, that in the above entitled cause, wherein your petitioners were intervenors, a final judgment was rendered against petitioners on the day of , 1859, and signed on the day of , 1859; that they are informed and believe that they have a right to have said judgment revised and examined by the Supreme Court of the United States, on a writ of error, and that they are now desirous of obtaining a writ of error from the said judgment.

Wherefore your petitioners pray that a writ of error be allowed them in the said case, returnable to the next term of the supreme court on their furnishing bond, conditioned according to law.

(Signed) MOTT & FRASER,
For Appellees above named.

Bond annexed.

Know all men by these presents, that we, Oakey, Hawkins & Co., S. C. Faust, widow of the late Faust, and Rebecca J. White, herein aided and assisted by her husband, J. J. B. White, as principals, and J. Virgil Richards as securities, are held and firmly bound unto Hamilton M. Wright, Wright, Williams & Co., J. J. B. White, in the sum of five hundred dollars, lawful money of the United States, well and truly to be paid to them, their heirs, executors, administrators, and assigns, and for which payment well and truly to be made, we bind ourselves, and each of us by him or herself, and our heirs, executors, administrators, or assigns, by these presents.

Sealed with our seals, and dated the 15th June, 1859.

And whereas the said Oakey, Hawkins & Co., Mrs. S. C. Faust, widow of the late Faust, and Mrs. Rebecca J. White, wife of J. J. B. White, have this day presented a petition to the honorable the supreme court of Louisiana, praying for a writ of error in the case entitled Wright, Williams & Co. vs. J. J. B. White,

Oakey, Hawkins & Co., et als., intervenors, No. 5,527 of the docket of said court, which case was decided against them a term of the court holden in the city of New Orleans, on the 25th day of April, A. D. 1859:

Therefore, now, the condition of the above obligation is such, that if we, the above bounden, Oakey, Hawkins & Co., Mrs. S. C. Faust, and Mrs. R. J. White, shall prosecute the said writ of error, and well and truly pay to the said Wright, Williams & Co., the plaintiffs in said case, all such damages as they may recover against us in case it should be decided that the said writ of error was wrongfully obtained, and the judgment heretofore rendered against us should be affirmed to be void, otherwise to remain in full force.

(Signed) OAKEY, HAWKINS & CO., [SEAL.]
By G. S. HAWKINS.
(Signed) MRS. S. C. FAUST, [SEAL.]
& MRS. R. J. WHITE, [SEAL.]
By MOTT & FRASER,
Their Attorneys.
(Signed) J. VIRGIL RICHARDS. [SEAL.]
Attest: (Signed) J. G. MURTAGH.

Approved by—
(Signed) E. T. MERRICK,
Chief Justice.

(*Endorsement:*)

No. 5,527. Supreme Court. Wright, Williams & Co., in liquidation, app'ts, vs. J. J. B. White, app'ee; Oakey, Hawkins & Co. et al., intervenors, app'ees. Petition and bond for a writ of error. Supreme Court.
Filed June 15th, 1859.
(Signed) EUGENE LASERE, *Cl'k.*

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Louisiana, holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or one of you, between Hamilton M. Wright, sole assignee of the rights and interests of the late commercial firms of Wright, Williams & Co., and J. J. B. White, defendant, and Oakey, Hawkins & Co., composed of Gilbert S. Hawkins and Peter J. Cockburn, Mrs. Rebecca J. White and Mrs. S. C. Faust, a manifest error hath happened, to the great damage of the said Gilbert S.

Hawkins and Peter J. Cockburn, composing Oakey, Hawkins & Co., Mrs. Rebecca J. White, and Mrs. S. C. Faust, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 1st Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 14th of June, in the year of our Lord one thousand eight hundred and fifty-nine.

[L. S.]

(Signed) G. W. GURLEY,
Clerk of the United States Circuit Court for Eastern District of Louisiana.

Allowed by—
(Signed) E. T. MERRICK.

(*Endorsement:*)

Supreme Court of the State of Louisiana. No. 5,527. Wright, Williams & Co., app't, vs. J. J. B. White, app'ee; Oakey, Hawkins & Co., and Mrs. White, and Mrs. Faust, intervenors, app'ees. Writ of error.

Copy of writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, in pursuance the statutes is such cases made and provided, this 15th day of June, 1859.

(Signed) MOTT & FRASER,
Attorneys of Plaintiffs in Error.

No. 5,527. Supreme Court of the State of La.
Filed June 15th, 1859.
(Signed) EUGENE LASERE, *Cl'k.*

Citation in Error.

THE UNITED STATES OF AMERICA.

The President of the United States to Gilbert S. Hawkins and Peter J. Cockburn, who compose the commercial firm of Oakey, Hawkins & Co., and trade under said firm, to Mrs. Rebecca J. White, wife of J. J. B. White, and Mrs. S. C Faust, greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein James J. B. White is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done in that behalf.

Witness the Honorable Edwin T. Merrick, chief justice of the supreme court of the State of Louisiana, this fifteenth day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) EDWIN T. MERRICK.

(*Endorsement:*)

Supreme Court of the State of La. No. 5,527. Wright, Williams & Co. vs. J. J. B. White, app'ee.; Oakey, Hawkins & Co. et als., intervenors, app'ees. Citation in error.

Filed June 15th, 1859.

(Signed) EUGENE LASERE, *Cl'k.*

Sheriff's Return.

Rec'd June 24th, 1859, and on the 25th of the same month and year served a copy of this citation in error on Gilbert S. Hawkins personally; and on the 6th July, 1859, served a similar copy on Kennedy and Miles, (attorneys for Mrs. Rebecca J. White, wife of J. J. B. White, and Mrs. S. C. Faust,) personally, who accepted service of the same; and on the same day served a similar copy on P. J. Cockburn, personally. Returned same day.

(Signed) ROB'T SWAIN,
D'y Sheriff of P. O.

Sh'ff's fees, $2 50.

Supreme Court. Filed July 7th, 1859.

(Signed) F. A. FOYGNET, *D'y Clerk.*

Citation in Error.

THE UNITED STATES OF AMERICA.

The President of the United States to Hamilton M. Wright, sole assignee of the rights and interests of the late commercial firm of Wright, Williams & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Gilbert S. Hawkins and Peter J. Cockburn, Mrs. Rebecca J. White, wife of J. J. B. White, and Mrs. S.

C. Faust, widow, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edwin T. Merrick, chief justice of the supreme court of the State of Louisiana, this fifteenth day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) EDWIN T. MERRICK.

(*Endorsement:*)

5,527. Supreme Court of the State of La. Wright, Williams & Co., app'ts, vs. J. J. B. White, app'ee; Oakey, Hawkins & Co. et als., intervenors, app'ees. Citation in error.

Filed June 15th, 1859.

EUGENE LASERE, *Cl'k.*

Sheriff's Return.

Rec'd June 24th, 1859; and on the 28th of the same month and year, served a copy of the within citation in error on Hamilton M. Wright, app't herein, personally.

Returned 28th June, 1859.

(Signed) ROBERT SWAIN,
Dep'y Sheriff of P. O.

Supreme Court. Filed July 7th, 1859.

F. A. FOYGNET, *Dep. Clerk.*

Citation in Error.

THE UNITED STATES OF AMERICA.

The President of the United States to Hamilton M. Wright, sole assignee of the rights and interests of the late commercial firm of Wright, Williams & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein James J. B. White is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edwin T. Merrick, chief justice of the supreme court of the State of Louisiana, this fifteenth day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) EDWIN T. MERRICK.

(*Endorsement:*)

5,527. Supreme Court of the State of La. Wright, Williams & Co., app'ts, vs. J. J. B. White, app'ee; Oakey, Hawkins & Co. et als., intervenors, app'ees. Citation in error.

Filed June 15th, 1859.

(Signed) EUGENE LASERE, *Cl'k.*

Sheriff's Return.

Rec'd June 24th, 1859; and on the 28th of the same month and year served a copy of the within citation in error on Hamilton M. Wright, appellant herein, personally.

Returned 28th June, 1859.

(Signed) ROB'T SWAIN,
Dep. Sheriff of P. O.

Sh'ff's fees, $1 00.

Supreme Court. Filed July 7th, 1859.

(Signed) F. A. FOYGNET,
Dep. Clerk.

Citation in Error.

UNITED STATES OF AMERICA.

The President of the United States to James J. B. White, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Gilbert S. Hawkins and Peter J. Cockburn, who compose the commercial firm of Oakey, Hawkins & Co., and trade under said firm, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edwin T. Merrick, chief justice of the State of Louisiana, the fifteenth day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) EDWIN T. MERRICK.

(*Endorsement:*)

5,527. Supreme Court of the State of La. Wright, Williams & Co., app'ts, vs. J. J. B. White, app'ee; Oakey, Hawkins & Co. et als., intervenors, app'ees. Citation in error.

Filed June 15th, 1859.

(Signed) EUGENE LASERE, *Cl'k.*

Sheriff's Return.

Rec'd June 24th, 1859, and on the 18th of October, 1859, I

served a copy of this citation in error on W. S. Stansbury, esq., curator ad hoc to James J. B. White, defendant in error herein, personally.

Returned 8th October, 1859.

(Signed) ROBERT SWAIN,
D'y Sh'ff of Parish of Orleans.

Filed October 19th, 1859.

(Signed) EUGENE LASERE, *Cl'k.*

Copy of Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Louisiana, holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or one of you, between Hamilton M. Wright, sole assignee of the rights and interest of the late commercial firm of Wright, Williams & Co., and J. J. B. White as defendant, and Oakey, Hawkins & Co., composed of Gilbert S. Hawkins and Peter J. Cockburn, Mrs. Rebecca J. White and Mrs. S. C. Faust, as intervenors, a manifest error hath happened, to the great damage of the said Gilbert S. Hawkins and Peter J. Cockburn, composing Oakey, Hawkins & Co., Mrs. Rebecca J. White and Mrs. S. C. Faust, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 14th of June, in the year of our Lord one thousand eight hundred and fifty-nine.

(Signed) J. W. GURLEY, [SEAL.]
Clerk of the United States Circuit Court
for Eastern District of Louisiana.

Allowed by—

(Signed) E. T. MERRICK.

(*Endorsement:*)

Supreme Court of the State of Louisiana. No. 5,527. Wright, Williams & Co., app'ts, vs. J. J. B. White, app'ee; Oakey, Hawkins & Co. et als., intervenors, app'ees. Writ of error.

Filed June 15th, 1859.

(Signed) EUGENE LASERE, *Clerk.*

Copy of Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Louisiana, holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or one of you, between Hamilton M. Wright, sole assignee of the rights and interests of the late commercial firm of Wright, Williams & Co., and J. J. B. White as defendant, and Oakey, Hawkins & Co., composed of Gilbert S. Hawkins and Peter J. Cockburn, as co-partners, Mrs. Rebecca J. White and Mrs. S. C. Faust as intervenors, a manifest error hath happened, to the great damage of the said J. J. B. White, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable R. B. Taney, Chief Justice of the said Supreme Court of the United States, this 14th of June, in the year of our Lord one thousand eight hundred and fifty-nine.

[SEAL.] (Signed) J. W. GURLEY,
Clerk of the United States Circuit Court for Eastern District of Louisiana.

Allowed by—
(Signed) E. T. MERRICK.

(*Endorsement:*)

Supreme Court of the State of La. No. 5,527. Wright, Wil-

liams & Co., app'ts, vs. J. J. B. White, app'ee; Oakey, Hawkins & Co. et als., intervenors, app'ees. Writ of error.

Filed June 15th, 1859.

(Signed) EUGENE LASERE, *Cl'k.*

UNITED STATES OF AMERICA.

Supreme Court, E. D., State of Louisiana.

I, Eugene Lasere, clerk of the supreme court of the State of Louisiana, for the eastern district, do hereby certify that the foregoing one hundred and thirty-nine pages do contain a true copy of the transcript of the proceedings had in the fourth district court of New Orleans, in a certain suit, wherein Wright, Williams & Co., in liquidation, were plaintiffs, J. J. B. White was defendant, and Oakey, Hawkins & Co. et als. were intervenors; and also of the proceedings had in this supreme court on the appeal taken by said Wright, Williams & Co., in liquidation, which appeal is now on the files thereof, under No. 5,527.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at the city of New Orleans, this fourteenth day of November, in the year of our Lord one [L. S.] thousand eight hundred and fifty-nine, and in the eighty-fourth year of the independence of the United States of America.

EUGENE LASERE, *Clerk.*

UNITED STATES OF AMERICA.

Supreme Court, E. D., State of Louisiana.

I, Edwin T. Merrick, chief justice of the supreme court of the State of Louisiana, do hereby certify that Eugene Lasere is clerk of the supreme court for the eastern district, that the signature of Eugene Lasere to the above certificate is in the proper handwriting of him the said clerk, that the certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-nine.

EDWIN T. MERRICK. [L. S.]

Filed 26th November, 1859.